

EXHIBIT 19

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:) Chapter 11
HIGHLAND CAPITAL) Case No.
MANAGEMENT, LP,) 19-34054-
Debtor.) sgj11
-----)
HIGHLAND CAPITAL)
MANAGEMENT, LP,) Adversary
Plaintiff,) Proceeding
vs.) No.
) 21-03004
HIGHLAND CAPITAL)
MANAGEMENT FUND ADVISORS,)
LP,)
Defendant.)
-----)

REMOTE ZOOM DEPOSITION OF DENNIS C. SAUTER

Wednesday, November 17, 2021

Reported by:

Stacey L. Daywalt

JOB NO. 202810

<p>Page 2</p> <p>1</p> <p>2</p> <p>3 Wednesday, November 17, 2021</p> <p>4 1:08 p.m.</p> <p>5</p> <p>6</p> <p>7 Remote Zoom Deposition of DENNIS C.</p> <p>8 SAUTER, held before Stacey L. Daywalt, a Court</p> <p>9 Reporter and Notary Public of the District of</p> <p>10 Columbia.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1 APPEARANCES:</p> <p>2 (All appearances via remote Zoom)</p> <p>3</p> <p>4 PACHULSKI STANG ZIEHL & JONES</p> <p>5 Attorneys for Plaintiff</p> <p>6 780 Third Avenue</p> <p>7 New York, New York 10017</p> <p>8 BY: JOHN MORRIS, ESQ.</p> <p>9</p> <p>10 MUNSCH HARDT KOPF & HARR</p> <p>11 Attorneys for Defendant</p> <p>12 500 North Akard Street</p> <p>13 Dallas, Texas 75201</p> <p>14 BY: DAVOR RUKAVINA, ESQ.</p> <p>15</p> <p>16 STINSON LLP</p> <p>17 Attorneys for James Dondero and Nancy</p> <p>18 Dondero</p> <p>19 3102 Oak Lawn Avenue</p> <p>20 Dallas, Texas 75219</p> <p>21 BY: MICHAEL AIGEN, ESQ.</p> <p>22</p> <p>23 ALSO PRESENT:</p> <p>24</p> <p>25 LA ASIA CANTY</p>
<p>Page 4</p> <p>1 D. Sauter</p> <p>2 DENNIS C. SAUTER,</p> <p>3 called as a witness, having been</p> <p>4 duly sworn by a Notary Public, was examined and</p> <p>5 testified as follows:</p> <p>6</p> <p>7 EXAMINATION BY</p> <p>8 MR. MORRIS:</p> <p>9 Q. Can you please state your name for</p> <p>10 the record.</p> <p>11 A. Dennis Sauter.</p> <p>12 Q. Good afternoon, Mr. Sauter. My name</p> <p>13 is John Morris. I'm an attorney at Pachulski</p> <p>14 Stang Ziehl & Jones. We are counsel to the</p> <p>15 reorganized Highland Capital Management, LP.</p> <p>16 Are you aware of that?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. And we're here for your</p> <p>19 deposition today. Correct?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And I've examined you previously.</p> <p>22 Is that right?</p> <p>23 A. I don't believe so.</p> <p>24 Q. Okay. Have you ever been deposed</p> <p>25 before?</p>	<p>Page 5</p> <p>1 D. Sauter</p> <p>2 A. I don't think so.</p> <p>3 Q. Okay. So very simple ground rules.</p> <p>4 I'm going to ask you a series of</p> <p>5 questions, and it's important that you allow me</p> <p>6 to finish my question before you begin the</p> <p>7 answer.</p> <p>8 Is that fair?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And I will certainly attempt to do</p> <p>11 the same for you and – insofar as I will</p> <p>12 attempt to allow you to finish your answer</p> <p>13 before I begin my question.</p> <p>14 But if I fail to do that, will you</p> <p>15 let me know?</p> <p>16 A. I will.</p> <p>17 Q. If there's anything that I ask you</p> <p>18 that you don't understand, will you let me know</p> <p>19 that?</p> <p>20 A. I will.</p> <p>21 Q. If you want to take a break at any</p> <p>22 time, just let me know and I'll try to</p> <p>23 accommodate you. I'd only ask that you don't</p> <p>24 ask for a break while a question is pending.</p> <p>25 Is that fair?</p>

<p style="text-align: right;">Page 6</p> <p>1 D. Sauter</p> <p>2 A. That's fair.</p> <p>3 Q. Okay. Do you have a license to</p> <p>4 practice law, sir?</p> <p>5 A. I do.</p> <p>6 Q. In what states are you admitted to</p> <p>7 practice?</p> <p>8 A. Just Texas.</p> <p>9 Q. When did you obtain your license?</p> <p>10 A. November of 2001.</p> <p>11 Q. And did you graduate from law</p> <p>12 school?</p> <p>13 A. I did.</p> <p>14 Q. Where did you graduate from law</p> <p>15 school?</p> <p>16 A. Southern Methodist University.</p> <p>17 Q. And can you describe for me your</p> <p>18 employment history from the time you graduated</p> <p>19 law school until today.</p> <p>20 A. Sure.</p> <p>21 Out of law school I began at a firm</p> <p>22 called Winstead Sechrest & Minick. And I was</p> <p>23 there just till tax day, so April 15 of 2002,</p> <p>24 when my group moved to a firm at the time that</p> <p>25 was called Godwin Gruber. I was at Godwin</p>	<p style="text-align: right;">Page 7</p> <p>1 D. Sauter</p> <p>2 Gruber until 2006.</p> <p>3 And I went in-house with a</p> <p>4 development firm called St. Ives Realty. I was</p> <p>5 there until 2009.</p> <p>6 And in 2009, I went back to work</p> <p>7 with the group I'd worked with before but now</p> <p>8 it was called Langley Weinstein. I was with</p> <p>9 Langley Weinstein until December 31 of '13.</p> <p>10 And in 2014, I started at Wick</p> <p>11 Phillips Gould & Martin, and I was at Wick</p> <p>12 Phillips until February of 2020 when I began at</p> <p>13 Nexpoint.</p> <p>14 Q. And while you were at Nexpoint – I</p> <p>15 mean, withdrawn.</p> <p>16 While you were at Wick Phillips, did</p> <p>17 you provide services to Highland or any of its</p> <p>18 affiliates?</p> <p>19 A. I provided services primarily to</p> <p>20 Nexpoint advisors and its wholly owned</p> <p>21 subsidiaries.</p> <p>22 I did have occasion to do a couple</p> <p>23 of discrete engagements for – I think they</p> <p>24 were CLOs but managed by Highland.</p> <p>25 Q. Prior to the time that you joined</p>
<p style="text-align: right;">Page 8</p> <p>1 D. Sauter</p> <p>2 Nexpoint, did you have any particular expertise</p> <p>3 in a specified area of the law?</p> <p>4 A. For about the last ten years, real</p> <p>5 estate.</p> <p>6 It was, before that, kind of a</p> <p>7 hybrid of construction related litigation,</p> <p>8 landlord-tenant disputes, you know,</p> <p>9 foreclosures. It was all real estate related</p> <p>10 litigation and then real estate transactional</p> <p>11 work.</p> <p>12 Q. How did you come to become employed</p> <p>13 by Nexpoint?</p> <p>14 A. I had worked with the folks here at</p> <p>15 Nexpoint for my entire tenure at Wick Phillips,</p> <p>16 and they gave me an offer and I accepted.</p> <p>17 Q. What offer did they give you? What</p> <p>18 position?</p> <p>19 A. I was hired to be general counsel of</p> <p>20 real estate.</p> <p>21 Q. Are you still the general counsel of</p> <p>22 real estate?</p> <p>23 A. I'm now the general counsel of</p> <p>24 Nexpoint.</p> <p>25 Q. When did you become the general</p>	<p style="text-align: right;">Page 9</p> <p>1 D. Sauter</p> <p>2 counsel of Nexpoint?</p> <p>3 A. I don't recall exactly, but I would</p> <p>4 say April or May of this year.</p> <p>5 Q. All right. So from approximately</p> <p>6 February of 2020 until approximately April of</p> <p>7 2021, you were the general counsel of real</p> <p>8 estate, and since approximately April of 2021</p> <p>9 you were – you have been the general counsel</p> <p>10 of Nexpoint.</p> <p>11 Do I have that right?</p> <p>12 A. Correct.</p> <p>13 Q. Was there a general counsel of</p> <p>14 Nexpoint during the time you served as general</p> <p>15 counsel of real estate?</p> <p>16 A. There was not.</p> <p>17 Generally the way things worked is</p> <p>18 Scott Ellington was general counsel at Highland</p> <p>19 Capital, and most of the legal department</p> <p>20 reported to him. I was the one attorney that</p> <p>21 was not under him.</p> <p>22 So no, there was not.</p> <p>23 Q. Okay. To whom do you report today?</p> <p>24 A. Matt McGraner.</p> <p>25 Q. And what is Mr. McGraner's title?</p>

<p style="text-align: right;">Page 10</p> <p>1 D. Sauter</p> <p>2 A. I believe it's managing director.</p> <p>3 Q. When did you begin reporting to</p> <p>4 Mr. McGraner?</p> <p>5 A. The day I was hired.</p> <p>6 Q. What are your duties and</p> <p>7 responsibilities today as the general counsel</p> <p>8 of Nexpoint?</p> <p>9 A. A lot different than I anticipated</p> <p>10 when I came on.</p> <p>11 Q. Fair.</p> <p>12 A. It's a little bit of everything. I</p> <p>13 get lots of questions from lots of different</p> <p>14 people.</p> <p>15 As you can imagine, there's been</p> <p>16 quite a shuffle with the Skyview formation,</p> <p>17 people leaving, people staying, and so, you</p> <p>18 know, it's been fairly fluid. So I try to</p> <p>19 handle whatever somebody brings me.</p> <p>20 Q. In your capacity as general counsel,</p> <p>21 do you have any responsibility for overseeing</p> <p>22 Nexpoint's litigation matters?</p> <p>23 A. I do.</p> <p>24 Q. Okay. And do you have</p> <p>25 responsibility for overseeing Nexpoint's</p>	<p style="text-align: right;">Page 11</p> <p>1 D. Sauter</p> <p>2 defense of the lawsuit that Highland has</p> <p>3 commenced against it?</p> <p>4 MR. RUKAVINA: Allow me to interject</p> <p>5 just a little bit here, John.</p> <p>6 You subpoenaed Mr. Sauter in the</p> <p>7 HCMFA lawsuit.</p> <p>8 Why are you asking him all about</p> <p>9 this Nexpoint?</p> <p>10 MR. MORRIS: Just because he told me</p> <p>11 that's where he works.</p> <p>12 MR. RUKAVINA: Yeah, that's fine.</p> <p>13 I mean, I'm not trying to be rude.</p> <p>14 Just –</p> <p>15 MR. MORRIS: I appreciate that.</p> <p>16 MR. RUKAVINA: – if you're –</p> <p>17 (Simultaneous crosstalk.)</p> <p>18 MR. MORRIS: Duly noted. Thank you,</p> <p>19 Davor.</p> <p>20 THE REPORTER: Please watch the</p> <p>21 overlap of talking. Thank you.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Mr. Sauter, Mr. Rukavina brings up a</p> <p>24 good point.</p> <p>25 Are you also the general counsel of</p>
<p style="text-align: right;">Page 12</p> <p>1 D. Sauter</p> <p>2 Highland Capital Management Fund Advisors, LLP?</p> <p>3 A. I'm not.</p> <p>4 Q. You are not?</p> <p>5 A. I'm not the general counsel of</p> <p>6 Highland Capital Management Fund Advisors.</p> <p>7 Q. Okay. Can we refer to that entity</p> <p>8 as HCMFA today?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Do you have any title or role with</p> <p>11 HCMFA today?</p> <p>12 A. I don't have any official capacity</p> <p>13 with HCMFA, although I do perform work from</p> <p>14 time to time for HCMFA.</p> <p>15 Q. Okay. Does HCMFA have a general</p> <p>16 counsel, to the best of your knowledge?</p> <p>17 A. It does not.</p> <p>18 Q. Does HCMFA have any officers today,</p> <p>19 to the best of your knowledge?</p> <p>20 A. It does, but I'm not sure I can name</p> <p>21 them off to you.</p> <p>22 Q. Okay. What services do you provide</p> <p>23 to HCMFA?</p> <p>24 A. Again, like other affiliated</p> <p>25 entities, when it has legal needs that meet my</p>	<p style="text-align: right;">Page 13</p> <p>1 D. Sauter</p> <p>2 expertise, people bring it to me and I work on</p> <p>3 it.</p> <p>4 Q. And what's an "affiliated entity" in</p> <p>5 the way that you've used that term?</p> <p>6 A. I generally refer to HCMFA, Nexpoint</p> <p>7 Advisors and the wholly owned subsidiaries of</p> <p>8 Nexpoint Advisors as the affiliated entities.</p> <p>9 HCMFA also owns Nexpoint Securities,</p> <p>10 which is the broker dealer, and so I do work</p> <p>11 with those folks from time to time as well.</p> <p>12 Q. Is there a source of affiliation</p> <p>13 between Nexpoint and HCMFA?</p> <p>14 A. Yes, Mr. Dondero.</p> <p>15 Q. And he controls them both to the</p> <p>16 best of your knowledge. Is that right?</p> <p>17 A. I – I guess it depends on how you</p> <p>18 define "control."</p> <p>19 But yes, he is a controlling person</p> <p>20 of Nexpoint Advisors, and yes, for all intents</p> <p>21 and purposes, he's the controlling person of</p> <p>22 HCMFA.</p> <p>23 Q. Okay. And can we refer to HCMFA and</p> <p>24 Nexpoint Advisors, LP together as "the</p> <p>25 advisors"?</p>

<p>Page 14</p> <p>1 D. Sauter</p> <p>2 A. That's fine.</p> <p>3 Q. The advisors are each advisory</p> <p>4 firms. Is that right?</p> <p>5 A. Correct.</p> <p>6 Q. And each of them provide advisory</p> <p>7 services to certain funds. Is that correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. Do you hold any titles with</p> <p>10 any of the funds that are advised by either of</p> <p>11 the advisors?</p> <p>12 A. Yes, I am general counsel for</p> <p>13 Nexpoint Residential Trust and I'm general</p> <p>14 counsel of Nexpoint Real Estate Finance.</p> <p>15 Q. Any others?</p> <p>16 A. No, sir.</p> <p>17 Q. Okay. Do you have –</p> <p>18 A. Wait. Wait. Let me clarify.</p> <p>19 I think I am general counsel of</p> <p>20 Nexpoint Real Estate Advisors, and I may be</p> <p>21 general counsel of each of them. I think there</p> <p>22 are nine in total.</p> <p>23 Q. Okay. And are each of them separate</p> <p>24 funds?</p> <p>25 A. Each of the advisors are – manage a</p>	<p>Page 15</p> <p>1 D. Sauter</p> <p>2 discrete business line. They're separate</p> <p>3 entities, but not necessarily funds.</p> <p>4 Q. And are each of them owned</p> <p>5 indirectly or directly by Nexpoint Advisors,</p> <p>6 LP?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay.</p> <p>9 When did you first meet Mr. Dondero?</p> <p>10 A. I don't recall.</p> <p>11 I think I met him once at an event</p> <p>12 that I was invited to years ago, maybe 2017.</p> <p>13 Q. Do you know if he holds a title at</p> <p>14 HCMFA?</p> <p>15 A. I don't believe he does.</p> <p>16 Q. How about Nexpoint? Does he hold a</p> <p>17 title at Nexpoint?</p> <p>18 A. Yes, he's the president.</p> <p>19 Q. And even though he doesn't hold a</p> <p>20 title at HCMFA, it's your understanding that he</p> <p>21 controls HCMFA. Is that right?</p> <p>22 A. I don't know that I would say that.</p> <p>23 And again, I would need to look at</p> <p>24 the organizational documents.</p> <p>25 Q. Well, as – withdrawn.</p>
<p>Page 16</p> <p>1 D. Sauter</p> <p>2 Do you know if Mr. Dondero serves as</p> <p>3 the portfolio manager for any of the funds to</p> <p>4 which the advisors provide advisory services?</p> <p>5 A. He does.</p> <p>6 I don't know which ones.</p> <p>7 Q. We're going to talk in a little</p> <p>8 while about a TerreStar NAV issue.</p> <p>9 MR. MORRIS: And Stacey, that's all</p> <p>10 caps N-A-V, and it's T-E-R-R-A-S-T-A-R [sic].</p> <p>11 Q. We're going to talk a little bit</p> <p>12 about a TerreStar NAV issue.</p> <p>13 Are you generally familiar with</p> <p>14 that?</p> <p>15 A. Generally.</p> <p>16 Q. Okay. And is it your understanding</p> <p>17 that that NAV issue, that TerreStar NAV issue,</p> <p>18 related to certain equity positions that were</p> <p>19 held by certain funds managed by HCMFA?</p> <p>20 A. Yes, I think it was – Global</p> <p>21 Allocation Fund is the one that was</p> <p>22 particularly the insured.</p> <p>23 Q. And can we refer to that as GAF?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Do you know who the portfolio</p>	<p>Page 17</p> <p>1 D. Sauter</p> <p>2 manager of GAF was in 2019?</p> <p>3 A. I do not.</p> <p>4 Q. Do you know if it was Mr. Dondero?</p> <p>5 A. I do not.</p> <p>6 Q. In the course of your investigation,</p> <p>7 did you ever ask who the portfolio manager of</p> <p>8 GAF was?</p> <p>9 A. I did not.</p> <p>10 Q. Do you know Frank Waterhouse?</p> <p>11 A. I do.</p> <p>12 Q. When did you first meet</p> <p>13 Mr. Waterhouse?</p> <p>14 A. I think I met him just before I came</p> <p>15 on. It would have been maybe December of 2019.</p> <p>16 Q. Okay. Do you know if Mr. Waterhouse</p> <p>17 holds any titles with either of the advisors?</p> <p>18 A. I believe so, but I'm not exactly</p> <p>19 sure.</p> <p>20 MR. RUKAVINA: I'm going to object</p> <p>21 to vague or form there.</p> <p>22 What time are you specifying,</p> <p>23 Mr. Morris?</p> <p>24 MR. MORRIS: I appreciate that. Let</p> <p>25 me restate the question.</p>

<p>Page 18</p> <p>1 D. Sauter</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Mr. Sauter, do you know if</p> <p>4 Mr. Waterhouse held any position with either of</p> <p>5 the advisors at any time in 2019?</p> <p>6 A. I believe he did, but I – I would</p> <p>7 say it was probably treasurer and CFO, but I'm</p> <p>8 speculating.</p> <p>9 Q. In the course of your investigation,</p> <p>10 did you try to determine what title</p> <p>11 Mr. Waterhouse held with HCMFA?</p> <p>12 A. I have not.</p> <p>13 Q. Have you ever tried to determine</p> <p>14 what title Mr. Waterhouse held at HCMFA at any</p> <p>15 time?</p> <p>16 A. At one point I knew what it is. I</p> <p>17 just can't recall.</p> <p>18 Q. Okay. Does – do you know if</p> <p>19 Mr. Waterhouse holds a position with HCMFA</p> <p>20 today?</p> <p>21 A. I believe he does.</p> <p>22 Q. Do you have any understanding as to</p> <p>23 what that position is?</p> <p>24 A. Again, I think it's CFO and/or</p> <p>25 treasurer. That's consistent, I think.</p>	<p>Page 19</p> <p>1 D. Sauter</p> <p>2 Q. Do you have any understanding as to</p> <p>3 when Mr. Waterhouse became the treasurer and/or</p> <p>4 the CFO of HCMFA?</p> <p>5 A. I do not.</p> <p>6 Q. Do you know if Mr. Waterhouse holds</p> <p>7 any positions with any of the funds that are</p> <p>8 advised by either of the advisors?</p> <p>9 A. I believe he – I'm speculating. I</p> <p>10 don't know for certain.</p> <p>11 Q. During the course of your – you</p> <p>12 conducted an investigation around the TerreStar</p> <p>13 NAV issue. Right?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. During the course of your</p> <p>16 investigation, did you ever try to determine</p> <p>17 whether Mr. Waterhouse served in any capacity</p> <p>18 with any of the funds that are managed by</p> <p>19 HCMFA?</p> <p>20 A. Whether he – yes.</p> <p>21 Q. And what did you – what information</p> <p>22 did you learn in the course of your</p> <p>23 investigation on that issue?</p> <p>24 A. My understanding is that the</p> <p>25 valuation team was a subset of the group that</p>
<p>Page 20</p> <p>1 D. Sauter</p> <p>2 Mr. Waterhouse ran.</p> <p>3 Q. Right.</p> <p>4 I'm asking you specifically about</p> <p>5 whether he held positions at any of the funds.</p> <p>6 Did you understand that when I asked</p> <p>7 my question?</p> <p>8 A. I don't know whether he held any</p> <p>9 position with the funds.</p> <p>10 Q. Okay. And during your</p> <p>11 investigation, did you make any effort to try</p> <p>12 to determine whether he held any positions with</p> <p>13 GAF?</p> <p>14 Let's be very specific.</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you know a gentleman named Will</p> <p>17 Mabry?</p> <p>18 A. I do.</p> <p>19 Q. And do you know if Mr. Mabry was</p> <p>20 ever employed by either of the advisors?</p> <p>21 A. I don't know who employed Mr. Mabry.</p> <p>22 Q. Do you know if he was ever employed</p> <p>23 by Highland Capital Management, LP?</p> <p>24 A. I would suspect that he was employed</p> <p>25 by Highland Capital Management, LP.</p>	<p>Page 21</p> <p>1 D. Sauter</p> <p>2 Q. Okay. And what's the basis for that</p> <p>3 speculation?</p> <p>4 A. Because he's at Skyview, and I think</p> <p>5 all of the employees that were at Nexpoint</p> <p>6 Advisors or HCMFA remained where they were.</p> <p>7 Q. Do you know what position he held at</p> <p>8 Highland in 2019, if any?</p> <p>9 A. I don't know.</p> <p>10 Q. Do you know anything about</p> <p>11 Mr. Mabry's skills or expertise, if any?</p> <p>12 A. Other than I believe he was the</p> <p>13 assistant treasurer at GAF and he was on the</p> <p>14 valuation team as well.</p> <p>15 Q. So your understanding is he was the</p> <p>16 assistant treasurer of the fund that we have</p> <p>17 defined as GAF.</p> <p>18 Do I have that right?</p> <p>19 A. That's my understanding.</p> <p>20 Q. Okay. And what's the basis for that</p> <p>21 understanding?</p> <p>22 A. That's just what I recall.</p> <p>23 Q. Okay. To the best of your</p> <p>24 knowledge, does he have an accounting</p> <p>25 background?</p>

<p>Page 22</p> <p>1 D. Sauter</p> <p>2 A. I don't know.</p> <p>3 Q. And is it your understanding that he</p> <p>4 was part of a valuation team?</p> <p>5 I think you used that term.</p> <p>6 A. Yes, I believe he was.</p> <p>7 Q. Okay. And what's the basis for that</p> <p>8 understanding on your part?</p> <p>9 A. Discussions that I've had with Frank</p> <p>10 and his knowledge of the TerreStar NAV error.</p> <p>11 Q. Did Mr. Mabry tell you that he was</p> <p>12 part of the valuation team?</p> <p>13 A. I don't recall.</p> <p>14 Q. Did you ask him?</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you know if Mr. Mabry played any</p> <p>17 role in any aspect of the TerreStar</p> <p>18 investigation that was conducted by the SEC?</p> <p>19 A. I don't know.</p> <p>20 Q. Did you ask Mr. Mabry if he played</p> <p>21 any role in connection with the SEC</p> <p>22 investigation?</p> <p>23 A. I did not.</p> <p>24 Q. Do you know if Mr. Mabry played any</p> <p>25 role in formulating HCMFA's response to the</p>	<p>Page 23</p> <p>1 D. Sauter</p> <p>2 SEC?</p> <p>3 A. I do not.</p> <p>4 Q. Did you ask him?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you know when he left Highland?</p> <p>7 A. I think he was terminated with the</p> <p>8 other employees.</p> <p>9 Q. You submitted a declaration in</p> <p>10 connection with the adversary proceeding that</p> <p>11 Highland commenced against the HCMFA.</p> <p>12 Do I have that right?</p> <p>13 A. Yes, sir.</p> <p>14 Q. All right. Let's take a look at</p> <p>15 that, if we can put that up on the screen.</p> <p>16 So from time to time, my assistant</p> <p>17 Ms. Canty is going to put some documents up on</p> <p>18 the screen, Mr. Sauter. And it's very</p> <p>19 important that you understand that I will give</p> <p>20 you every opportunity that you believe you need</p> <p>21 in order to read the document.</p> <p>22 So you know, if there's something</p> <p>23 that I put up there that you want to see more</p> <p>24 of, just let me know and we'll just scroll</p> <p>25 around. Okay?</p>
<p>Page 24</p> <p>1 D. Sauter</p> <p>2 A. Okay.</p> <p>3 (Exhibit 181, Declaration of Dennis</p> <p>4 C. Sauter, Jr., previously marked for</p> <p>5 identification.)</p> <p>6 Q. Okay. Do you see the first page of</p> <p>7 this document states that it's your</p> <p>8 declaration?</p> <p>9 A. I do.</p> <p>10 Q. And if we can go to the signature</p> <p>11 line, please.</p> <p>12 And that's your signature there,</p> <p>13 sir?</p> <p>14 A. It is.</p> <p>15 Q. And did you sign this on or about</p> <p>16 May 21st, 2021?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Do you remember the purpose of this</p> <p>19 declaration?</p> <p>20 A. It was requesting to file an amended</p> <p>21 answer.</p> <p>22 Q. Okay. Is it fair to say that your</p> <p>23 declaration sets forth the factual basis for</p> <p>24 the proposed amendment?</p> <p>25 A. Yes.</p>	<p>Page 25</p> <p>1 D. Sauter</p> <p>2 Q. And is it fair to say that your</p> <p>3 declaration describes the investigation that</p> <p>4 you did initially after the complaint was filed</p> <p>5 and then basically a second phase of the</p> <p>6 investigation after Mr. Waterhouse and</p> <p>7 Mr. Mabry migrated from Highland?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So the purpose of your</p> <p>10 investigation was to understand the origin of</p> <p>11 two promissory notes. Right?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. I just want to go through to</p> <p>14 the notes to make sure that the record is clear</p> <p>15 that we're talking about the same thing.</p> <p>16 There are certain documents that</p> <p>17 we've used in other depositions so they've been</p> <p>18 premarked, and I'd ask Ms. Canty to put up the</p> <p>19 document that's already been marked as</p> <p>20 Exhibit 54.</p> <p>21 MS. CANTY: Okay. John, do you want</p> <p>22 to let the court reporter know this current one</p> <p>23 is 181, premarked 181, this declaration.</p> <p>24 MR. MORRIS: Okay. Fine.</p> <p>25 (Exhibit 54, E-mail chain with</p>

<p>Page 26</p> <p>1 D. Sauter</p> <p>2 attachment dated 5/2/19, D-CNL003777-779,</p> <p>3 previously marked for identification.)</p> <p>4 Q. So if could just scroll down a</p> <p>5 little bit.</p> <p>6 Do you see there's – do you see</p> <p>7 it's – there's an e-mail from David Klos dated</p> <p>8 May 2nd?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know who Mr. Klos is?</p> <p>11 A. I do.</p> <p>12 Q. And who do you understand Mr. Klos</p> <p>13 to be? What role did he play in May of 2019?</p> <p>14 A. I don't know.</p> <p>15 I know he worked under Frank.</p> <p>16 Q. He worked out of – do you see</p> <p>17 there's an e-mail to a corporate accounting</p> <p>18 group?</p> <p>19 A. Yes.</p> <p>20 Q. Have you ever sent or received an</p> <p>21 e-mail from a Highland corporate accounting</p> <p>22 e-mail chain called the corporate accounting</p> <p>23 group?</p> <p>24 A. I've never sent an e-mail from the</p> <p>25 corporate accounting group.</p>	<p>Page 27</p> <p>1 D. Sauter</p> <p>2 I can't recall receiving one from</p> <p>3 them either.</p> <p>4 Q. Do you see that in this e-mail</p> <p>5 Mr. Klos asks to have \$2.4 million transferred</p> <p>6 from HCMLP to HCMFA?</p> <p>7 A. I do.</p> <p>8 Q. And do you see that he states:</p> <p>9 "This is a new interco loan"?</p> <p>10 A. I do.</p> <p>11 Q. And if we can see the response</p> <p>12 above, do you see how Ms. – do you know</p> <p>13 Kristin Hendrix?</p> <p>14 A. I do.</p> <p>15 Q. And who is Ms. Hendrix, to the best</p> <p>16 of your knowledge.</p> <p>17 A. I believe she worked under Mr. Klos.</p> <p>18 Q. And do you see that she wrote to</p> <p>19 someone named Blair and attached a copy of a</p> <p>20 note?</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p> <p>23 A. That's what it says.</p> <p>24 Q. And can we go to the next page,</p> <p>25 please.</p>
<p>Page 28</p> <p>1 D. Sauter</p> <p>2 And do you see that this is a</p> <p>3 promissory note for \$2.4 million dated May 2,</p> <p>4 2019?</p> <p>5 A. I do.</p> <p>6 Q. Okay. And can we go to the</p> <p>7 signature line.</p> <p>8 Do you see Mr. Waterhouse's</p> <p>9 signature?</p> <p>10 Do you see Mr. Waterhouse's</p> <p>11 signature, sir?</p> <p>12 A. I can't verify whether that's his</p> <p>13 signature, but I'll take your word for it.</p> <p>14 Q. Okay. Can you go to the top of the</p> <p>15 note, please.</p> <p>16 Do you see that the maker is defined</p> <p>17 to be Highland Capital Management Fund</p> <p>18 Advisors, LP?</p> <p>19 A. I do see that that's what it says on</p> <p>20 the first page.</p> <p>21 Q. Okay. And this is one of the two</p> <p>22 notes that was the source of your</p> <p>23 investigation. Right? This was one of the two</p> <p>24 notes that you were investigating the origins</p> <p>25 of?</p>	<p>Page 29</p> <p>1 D. Sauter</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Let's look at the next note,</p> <p>4 please.</p> <p>5 (Exhibit 57, Promissory Note dated</p> <p>6 5/3/19, D-CNL003764-65, previously marked for</p> <p>7 identification.)</p> <p>8 Do you see this is a note for</p> <p>9 \$5 million and it's dated the next day,</p> <p>10 May 3rd, 2019?</p> <p>11 A. I see that.</p> <p>12 Q. Do you see that it's – it also</p> <p>13 defines as the maker Highland Capital</p> <p>14 Management Fund Advisors, LP?</p> <p>15 A. That's what it says on the first</p> <p>16 page, yes.</p> <p>17 Q. Okay. And if we can go to the</p> <p>18 signature line.</p> <p>19 Again, does that appear to be</p> <p>20 Mr. Waterhouse's signature?</p> <p>21 A. Again, I can't verify whether that's</p> <p>22 Mr. Waterhouse's signature or not.</p> <p>23 But it does say that the maker is</p> <p>24 Frank Waterhouse, not Highland Capital</p> <p>25 Management Fund Advisors.</p>

<p>Page 30</p> <p>1 D. Sauter</p> <p>2 Q. I understand.</p> <p>3 But the definition of "maker" is</p> <p>4 above. Correct?</p> <p>5 A. I wouldn't – that's not how I would</p> <p>6 draft a promissory note.</p> <p>7 Q. I didn't ask you how you would draft</p> <p>8 it.</p> <p>9 I'm just asking you whether, having</p> <p>10 just looked at the document and as a lawyer</p> <p>11 admitted to practice in law, would you agree</p> <p>12 that the term "maker" is a defined term in this</p> <p>13 document?</p> <p>14 MR. RUKAVINA: I'll just object to</p> <p>15 form here and also that this witness has not</p> <p>16 been called as an expert, even though he's a</p> <p>17 lawyer.</p> <p>18 So I'll just preserve that for the</p> <p>19 record.</p> <p>20 MR. MORRIS: Fair. That's fine.</p> <p>21 THE WITNESS: I would agree that</p> <p>22 "maker" is defined on the first page, but that</p> <p>23 would be an improper signature block, if it was</p> <p>24 intended to be Highland Capital Management Fund</p> <p>25 Advisors.</p>	<p>Page 31</p> <p>1 D. Sauter</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. All right. We're going to refer to</p> <p>4 these two notes collectively as "the notes."</p> <p>5 Is that okay?</p> <p>6 A. That's fine.</p> <p>7 Q. And these are the two notes that you</p> <p>8 were investigating. Right?</p> <p>9 A. Yes.</p> <p>10 Q. And it's your understanding that</p> <p>11 these are the two notes that Highland Capital</p> <p>12 Management is suing to collect on. Right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. According to your</p> <p>15 declaration, if we can go to Paragraph 13, if</p> <p>16 we can put that back up on the screen, as part</p> <p>17 of the initial investigation – withdrawn.</p> <p>18 I'm going to use the phrase "initial</p> <p>19 investigation" to mean the investigation that</p> <p>20 you conducted between the time the complaint</p> <p>21 was filed and the time that HCMFA filed its</p> <p>22 original answer on March 1st.</p> <p>23 Is that okay?</p> <p>24 A. Sure.</p> <p>25 Q. And during that initial</p>
<p>Page 32</p> <p>1 D. Sauter</p> <p>2 investigation, you spoke with Jim Dondero.</p> <p>3 Correct?</p> <p>4 A. I did.</p> <p>5 Q. Okay. And according to</p> <p>6 Paragraph 13, he couldn't recall the genesis of</p> <p>7 the notes. Is that right?</p> <p>8 A. That's correct.</p> <p>9 Q. Did you show him the notes?</p> <p>10 A. I don't recall.</p> <p>11 Q. Did you tell him that the notes were</p> <p>12 dated May 2nd and May 3rd, 2019?</p> <p>13 A. I don't recall that either.</p> <p>14 Q. Did you do anything to try to</p> <p>15 refresh his recollection about the timing of</p> <p>16 the notes?</p> <p>17 A. I'm sure I did.</p> <p>18 But I don't recall that conversation</p> <p>19 in any detail as I'm sitting here today.</p> <p>20 Q. Did you tell him the principal</p> <p>21 amount of the notes?</p> <p>22 A. Yes.</p> <p>23 Q. And even though you told him the</p> <p>24 principal amount of the notes, he still had no</p> <p>25 recollection as to what they related to. Is</p>	<p>Page 33</p> <p>1 D. Sauter</p> <p>2 that right?</p> <p>3 A. He couldn't recall the genesis,</p> <p>4 correct.</p> <p>5 Q. Did he have any recollection at all</p> <p>6 as to what the notes related to?</p> <p>7 A. I don't – I don't believe so,</p> <p>8 because if he had, then I would have been able</p> <p>9 to pin it down further.</p> <p>10 Q. How many conversations did you have</p> <p>11 with Mr. Dondero as part of your initial</p> <p>12 investigation?</p> <p>13 A. I don't recall.</p> <p>14 Two, three.</p> <p>15 Q. Was there anybody present other than</p> <p>16 the two of you?</p> <p>17 A. Again, I don't recall.</p> <p>18 Q. Do you recall if they took place on</p> <p>19 the phone or were they in person?</p> <p>20 A. It would have been in person.</p> <p>21 Q. And why do you say it would have</p> <p>22 been in person?</p> <p>23 A. Well, now that you say that, no, it</p> <p>24 probably wasn't in person because he would not</p> <p>25 have been in the office at that time.</p>

<p style="text-align: right;">Page 34</p> <p>1 D. Sauter</p> <p>2 There was obviously a lot of things</p> <p>3 going on at this point. Mr. Dondero had been</p> <p>4 evicted from the building, and so that made –</p> <p>5 I shouldn't say evicted. He'd been kicked out</p> <p>6 by the debtor, and so that made our</p> <p>7 communications a little more difficult.</p> <p>8 So I would have spoken with him on</p> <p>9 the phone because I did not go over to the</p> <p>10 NexBank office very often.</p> <p>11 Q. Paragraph 13 says that you also</p> <p>12 spoke with "the few employees of HCMFA."</p> <p>13 Do you see that in the middle of the</p> <p>14 paragraph?</p> <p>15 A. Yes.</p> <p>16 Q. Can you identify the other CMFA</p> <p>17 employees that you spoke with as part of your</p> <p>18 initial investigation?</p> <p>19 A. I would have spoken with Dustin</p> <p>20 Norris and –</p> <p>21 Q. Do you recall speaking – I</p> <p>22 apologize for interrupting.</p> <p>23 Go ahead.</p> <p>24 A. And so he wasn't an HCMFA employee,</p> <p>25 but Jason Post.</p>	<p style="text-align: right;">Page 35</p> <p>1 D. Sauter</p> <p>2 Q. Do you have a recollection of</p> <p>3 speaking to Mr. Norris, or are you just</p> <p>4 surmising that you probably did?</p> <p>5 A. I'm surmising that I probably would</p> <p>6 have.</p> <p>7 There was a lot, again, that was</p> <p>8 happening. I didn't have the historical</p> <p>9 knowledge of these things, and so I talked with</p> <p>10 Mr. Post and Mr. Norris daily about everything</p> <p>11 that was going on just to get some background</p> <p>12 on all of the moving parts.</p> <p>13 Q. Okay. Do you know if Mr. Norris</p> <p>14 held any position with HCMFA in 2019?</p> <p>15 A. I don't – I don't know for certain.</p> <p>16 I believe he did.</p> <p>17 I can't recall what his position</p> <p>18 would have been.</p> <p>19 Q. Does he have a position with HCMFA</p> <p>20 today, to the best of your knowledge?</p> <p>21 A. I believe he does.</p> <p>22 Q. And what do you understand his</p> <p>23 position to be?</p> <p>24 A. I would say vice president.</p> <p>25 Q. Do you know when he became vice</p>
<p style="text-align: right;">Page 36</p> <p>1 D. Sauter</p> <p>2 president of HCMFA?</p> <p>3 A. I do not.</p> <p>4 Q. Do you know if he was vice president</p> <p>5 of HCMFA in October 2020?</p> <p>6 A. I do not.</p> <p>7 Q. Do you know if Mr. Norris holds any</p> <p>8 positions with DAF – I'm sorry.</p> <p>9 Do you know if Mr. Norris holds any</p> <p>10 positions with GAF?</p> <p>11 A. I don't know.</p> <p>12 Q. How about Mr. Post? Do you know if</p> <p>13 Mr. Post held any positions with HCMFA in 2019?</p> <p>14 A. I don't.</p> <p>15 Q. Do you know if he holds any</p> <p>16 positions with HCMFA today?</p> <p>17 A. He does not.</p> <p>18 Q. Is Mr. Post a compliance officer, to</p> <p>19 the best of your knowledge?</p> <p>20 A. He was.</p> <p>21 He left a week ago to take another</p> <p>22 job.</p> <p>23 Q. So he was – and who did he – for</p> <p>24 whom did he serve as the chief compliance</p> <p>25 officer until a week ago?</p>	<p style="text-align: right;">Page 37</p> <p>1 D. Sauter</p> <p>2 A. He was chief compliance officer for</p> <p>3 Nexpoint Advisors.</p> <p>4 He may have been the chief</p> <p>5 compliance officer for HCMFA as well.</p> <p>6 Q. Okay.</p> <p>7 A. And if I had to guess, he would have</p> <p>8 had those same positions back in 2019 –</p> <p>9 Q. Okay.</p> <p>10 A. – because Thomas Surgent was the</p> <p>11 chief compliance officer for HCMFA and Jason</p> <p>12 worked under him.</p> <p>13 And I think that started sometime in</p> <p>14 2014, maybe earlier.</p> <p>15 Q. And did Mr. Norris and Mr. Post tell</p> <p>16 you during your initial investigation that they</p> <p>17 had no knowledge of the notes?</p> <p>18 A. Yeah, generally I don't think that</p> <p>19 they were aware of the notes, or I should say</p> <p>20 they weren't aware of the genesis of the notes.</p> <p>21 Q. Were they aware of the existence of</p> <p>22 the notes?</p> <p>23 A. They were.</p> <p>24 Q. Did they tell you when they had</p> <p>25 learned of the existence of the notes?</p>

<p>Page 38</p> <p>1 D. Sauter</p> <p>2 A. I think it's something that I raised</p> <p>3 to them because I didn't know where the notes</p> <p>4 had come from.</p> <p>5 Q. Right.</p> <p>6 And they told you that they were</p> <p>7 aware of the notes but they didn't know the</p> <p>8 genesis of them?</p> <p>9 A. I don't recall whether they were</p> <p>10 aware of the notes before I asked about them.</p> <p>11 Q. Did you ask them if they were aware</p> <p>12 of the notes prior to the time you showed it to</p> <p>13 them?</p> <p>14 A. I would have asked them what the</p> <p>15 notes were about.</p> <p>16 Q. I don't want to know what you would</p> <p>17 have done.</p> <p>18 I know this is hard, Mr. Sauter.</p> <p>19 I'm really just asking you to search your</p> <p>20 memory.</p> <p>21 Do you recall asking them whether</p> <p>22 they were aware of the existence of the notes</p> <p>23 prior to your conversation with them?</p> <p>24 A. I don't recall if I asked whether</p> <p>25 they were aware of the existence of the notes</p>	<p>Page 39</p> <p>1 D. Sauter</p> <p>2 prior to my conversation with them.</p> <p>3 Q. Now, Paragraph 13 says that</p> <p>4 Mr. Dondero could not recall the genesis of the</p> <p>5 notes.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Did Mr. Dondero indicate to you that</p> <p>9 he was aware of the existence of the notes even</p> <p>10 though he couldn't recall the genesis of the</p> <p>11 notes?</p> <p>12 A. That's not how I would characterize</p> <p>13 it, but...</p> <p>14 Q. How would you characterize it?</p> <p>15 A. He suggested that I talk to</p> <p>16 Mr. Waterhouse.</p> <p>17 Q. Did you ask Mr. Dondero when he</p> <p>18 first learned of the existence of the notes?</p> <p>19 A. No.</p> <p>20 Q. Did he say to you anything that</p> <p>21 caused you to believe that he was unaware of</p> <p>22 the existence of the notes prior to the</p> <p>23 commencement of the lawsuit?</p> <p>24 A. No.</p> <p>25 I guess let me clarify.</p>
<p>Page 40</p> <p>1 D. Sauter</p> <p>2 He didn't make any comments that</p> <p>3 made me think one way or the other.</p> <p>4 Q. And you didn't ask.</p> <p>5 Is that fair?</p> <p>6 A. Correct, I did not ask.</p> <p>7 Q. So you had no information as to</p> <p>8 whether or not Mr. Dondero actually knew of the</p> <p>9 existence of the notes prior to the</p> <p>10 commencement of the lawsuit.</p> <p>11 Is that fair?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Paragraph 13 also states that</p> <p>14 you reviewed limited books and records of</p> <p>15 HCMFA.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. What books and records did</p> <p>19 you review as part of your initial</p> <p>20 investigation?</p> <p>21 A. I don't recall exactly what I looked</p> <p>22 at or for.</p> <p>23 I literally had to just go onto the</p> <p>24 system and try to find anything that related to</p> <p>25 the notes so I could try to find out what they</p>	<p>Page 41</p> <p>1 D. Sauter</p> <p>2 were.</p> <p>3 Q. Did you make any effort to try to</p> <p>4 determine whether HCMFA had accounted for the</p> <p>5 notes in its books and records?</p> <p>6 A. I did not.</p> <p>7 Q. Do you know today whether HCMFA ever</p> <p>8 accounted for the notes in its books and</p> <p>9 records?</p> <p>10 A. I don't know.</p> <p>11 Q. Have you ever reviewed HCMFA's</p> <p>12 balance sheets?</p> <p>13 A. I think I have, but I don't – I</p> <p>14 can't recall exactly when.</p> <p>15 Q. Did you ever make any effort to</p> <p>16 determine whether HCMFA carried these notes on</p> <p>17 its balance sheet as liabilities?</p> <p>18 A. I did not.</p> <p>19 Q. Do you know if HCMFA ever requested</p> <p>20 an extension of time to respond to the</p> <p>21 complaint?</p> <p>22 A. I don't know, but I would assume so.</p> <p>23 Q. Okay. Do you have any knowledge of</p> <p>24 HCMFA having done so?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 42</p> <p>1 D. Sauter</p> <p>2 Q. Okay. Do you know if – prior to</p> <p>3 the time it filed its original answer, whether</p> <p>4 HCMFA ever asked HCMLP to provide any documents</p> <p>5 in connection with the adversary proceeding?</p> <p>6 A. Say that again.</p> <p>7 Q. Sure.</p> <p>8 So HCMFA filed its answer on</p> <p>9 March 1st, according to Paragraph 12.</p> <p>10 Do I have that right?</p> <p>11 A. I believe that's right.</p> <p>12 Q. Okay. Do you know if HCMFA ever</p> <p>13 asked Highland for any documents before it</p> <p>14 filed its answer?</p> <p>15 A. I don't recall.</p> <p>16 Q. So at the time HCMFA filed its</p> <p>17 answer, Mr. Dondero couldn't recall the genesis</p> <p>18 of the notes. Correct?</p> <p>19 A. That's right.</p> <p>20 Q. And neither Mr. Post nor Mr. Norris</p> <p>21 could recall the genesis of the notes.</p> <p>22 Correct?</p> <p>23 A. Correct.</p> <p>24 Q. And HCMFA had limited access to</p> <p>25 books and records. Correct?</p>	<p style="text-align: right;">Page 43</p> <p>1 D. Sauter</p> <p>2 A. Correct.</p> <p>3 Q. And HCMFA had no access to the</p> <p>4 debtor's employees who had provided services to</p> <p>5 HCMFA under shared services agreements.</p> <p>6 Correct?</p> <p>7 A. I think our view was it was</p> <p>8 potentially improper to reach out to those</p> <p>9 employees on a matter that was adverse to</p> <p>10 HCMLP, and so we refrained from doing so.</p> <p>11 Q. Okay. And so under those</p> <p>12 circumstances, HCMFA nevertheless filed an</p> <p>13 answer that asserted no affirmative defenses.</p> <p>14 Correct?</p> <p>15 A. Yes.</p> <p>16 Q. But this situation changed in</p> <p>17 mid-April 2001. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. If we can scroll down to</p> <p>20 Paragraph 19.</p> <p>21 (Discussion was held off the</p> <p>22 record.)</p> <p>23 Q. So in April 2001, the situation</p> <p>24 changed because Mr. Waterhouse and other former</p> <p>25 employees of Highland had migrated over to</p>
<p style="text-align: right;">Page 44</p> <p>1 D. Sauter</p> <p>2 Skyview so that you had access to them. Is</p> <p>3 that right?</p> <p>4 A. Correct.</p> <p>5 Q. And that's when you conducted the</p> <p>6 second phase of your investigation. Correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you'll see at the end of Page 4</p> <p>9 you reference that the debtor had provided</p> <p>10 access to HCMFA of much of its books and</p> <p>11 records.</p> <p>12 Do I have that right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And what books and records</p> <p>15 did Highland provide between March 1st and</p> <p>16 mid-April when you conducted the second phase</p> <p>17 of your investigation?</p> <p>18 Are there any particular books and</p> <p>19 records that you're referring to in that</p> <p>20 sentence?</p> <p>21 A. I can't recall exactly what it was.</p> <p>22 There was a process that we were</p> <p>23 going through that I think – if you'll recall,</p> <p>24 that we went back and forth on obtaining access</p> <p>25 to books and records, submitting written</p>	<p style="text-align: right;">Page 45</p> <p>1 D. Sauter</p> <p>2 requests, and those were either granted or</p> <p>3 denied. And so there were a litany of</p> <p>4 documents that were sent over.</p> <p>5 Q. Can you identify any documents that</p> <p>6 you reviewed as part of either the initial</p> <p>7 investigation or the follow-up investigation in</p> <p>8 April 2021?</p> <p>9 A. Yes.</p> <p>10 I would have reviewed documents</p> <p>11 related to the TerreStar NAV error.</p> <p>12 Q. And can you describe what those</p> <p>13 documents are.</p> <p>14 A. Memos.</p> <p>15 Q. Okay. Do you recall how many memos</p> <p>16 you reviewed that concerned the TerreStar NAV</p> <p>17 issue?</p> <p>18 A. I want to say that there were three,</p> <p>19 four or five, something along those lines.</p> <p>20 I think there was a memo that was</p> <p>21 submitted to the board and then maybe some</p> <p>22 communications with the SEC.</p> <p>23 Q. And is it your testimony that HCMFA</p> <p>24 did not have those memos until after March 1st,</p> <p>25 2021?</p>

<p style="text-align: right;">Page 46</p> <p>1 D. Sauter</p> <p>2 A. I don't know whether we had access</p> <p>3 to those memos, but I didn't – I wasn't able</p> <p>4 to speak to Frank Waterhouse, and so I didn't</p> <p>5 know to look for them.</p> <p>6 Q. And neither Mr. Dondero nor</p> <p>7 Mr. Norris nor Mr. Post thought to inform you</p> <p>8 about the NAV star error [sic] because they had</p> <p>9 no idea what the notes related to. Correct?</p> <p>10 A. That's my recollection. That's</p> <p>11 correct.</p> <p>12 Q. Okay. Other than the three to five</p> <p>13 memos that you've just described, are there any</p> <p>14 other documents that you recall reviewing as</p> <p>15 part of your investigation?</p> <p>16 A. No.</p> <p>17 Q. Do you know to whom the memos that</p> <p>18 you've just described were addressed?</p> <p>19 Who were they sent to?</p> <p>20 A. I believe there was one that was</p> <p>21 sent to the board.</p> <p>22 And then the others, I think, were</p> <p>23 just either internal communications or</p> <p>24 communications with the SEC.</p> <p>25 Q. Can we scroll down to Paragraph 22,</p>	<p style="text-align: right;">Page 47</p> <p>1 D. Sauter</p> <p>2 please.</p> <p>3 Actually, look at Paragraph 21</p> <p>4 first.</p> <p>5 According to Paragraph 21, as part</p> <p>6 of the second phase of your investigation, you</p> <p>7 spoke with Mr. Waterhouse and Mr. Mabry.</p> <p>8 Correct?</p> <p>9 A. Yes.</p> <p>10 Q. Did you speak with anybody else as</p> <p>11 part of the second phase of your investigation?</p> <p>12 A. Yes, I would have spoken with Jason</p> <p>13 Post and Dustin Norris.</p> <p>14 Q. And is it fair to say based on the</p> <p>15 second phase of your – withdrawn.</p> <p>16 Is it fair to say that your</p> <p>17 conclusions that resulted from the second phase</p> <p>18 of your investigation are set forth in</p> <p>19 Paragraph 22?</p> <p>20 A. (Reviewing document.)</p> <p>21 I wouldn't say all of my</p> <p>22 conclusions. But yes, that's some of them.</p> <p>23 Q. Okay. Is it fair to say that, based</p> <p>24 on the second phase of your investigation, you</p> <p>25 concluded, among other things, "that the notes</p>
<p style="text-align: right;">Page 48</p> <p>1 D. Sauter</p> <p>2 were signed by mistake by Waterhouse without</p> <p>3 authority from HCMFA"?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Let's talk about your</p> <p>6 discussions with Mr. Waterhouse as part of your</p> <p>7 investigation.</p> <p>8 How many times did you speak with</p> <p>9 him?</p> <p>10 A. Probably three.</p> <p>11 Q. And was anybody else present for any</p> <p>12 of the three conversations?</p> <p>13 A. I don't recall. I don't think so.</p> <p>14 Q. Did you take any notes of your</p> <p>15 conversations with Mr. Waterhouse?</p> <p>16 A. I don't recall.</p> <p>17 Q. Do you recall whether you sent</p> <p>18 anybody any e-mails summarizing your</p> <p>19 conversations with Mr. Waterhouse?</p> <p>20 A. I don't recall.</p> <p>21 Q. Did the three conversations take</p> <p>22 place in person, on the phone or some mix</p> <p>23 thereof?</p> <p>24 A. I think it would have been a mix</p> <p>25 thereof.</p>	<p style="text-align: right;">Page 49</p> <p>1 D. Sauter</p> <p>2 Q. Do you recall which of the three</p> <p>3 conversations was the longest, which was the</p> <p>4 shortest?</p> <p>5 I just want to get a sense of how</p> <p>6 much time you spent with Mr. Waterhouse.</p> <p>7 A. I don't, because again, there was</p> <p>8 lots going on.</p> <p>9 The first one was in the conference</p> <p>10 room on the 11th floor at NexBank. The second</p> <p>11 one was in his office. And I think the third</p> <p>12 was on a phone call.</p> <p>13 Q. Did any of them last more than ten</p> <p>14 minutes?</p> <p>15 A. I can't say for certain.</p> <p>16 I would think so, but...</p> <p>17 Q. Okay. Did you show Mr. Waterhouse</p> <p>18 either of the notes as part of either of these</p> <p>19 three interviews?</p> <p>20 A. I don't recall if I did.</p> <p>21 But he knew – he knew the notes.</p> <p>22 Q. And what did he say to you that led</p> <p>23 you to believe that he knew the notes?</p> <p>24 A. Because he was aware of the notes.</p> <p>25 I...</p>

<p>Page 50</p> <p>1 D. Sauter</p> <p>2 Q. Did he tell the circumstances</p> <p>3 surrounding the execution of the notes?</p> <p>4 A. Yes.</p> <p>5 Q. What did he tell you?</p> <p>6 A. He said those notes were executed in</p> <p>7 connection with the TerreStar NAV error.</p> <p>8 Q. During your discussions with</p> <p>9 Mr. Waterhouse, did he ever deny signing the</p> <p>10 notes?</p> <p>11 A. No.</p> <p>12 Q. He never told you that he was</p> <p>13 unaware of the existence of the notes, did he?</p> <p>14 A. No.</p> <p>15 Q. In fact, before signing your</p> <p>16 declaration, you believed Mr. Waterhouse in</p> <p>17 fact had signed the notes. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. And that's why in Paragraph 22 you</p> <p>20 specifically wrote that the notes were signed</p> <p>21 by mistake by Waterhouse. Right?</p> <p>22 A. Yes.</p> <p>23 Q. And you understood at the time you</p> <p>24 signed your declaration that Mr. Waterhouse had</p> <p>25 signed the notes at a time when he was HCMFA's</p>	<p>Page 51</p> <p>1 D. Sauter</p> <p>2 chief financial officer. Correct?</p> <p>3 A. I don't think I said that, but that</p> <p>4 would have been my assumption.</p> <p>5 Q. Okay. I think if we can – give me</p> <p>6 just one moment. I think I...</p> <p>7 Can we go to Paragraph 29, please.</p> <p>8 You'll see, according to your</p> <p>9 declaration, it says: "Returning to the notes,</p> <p>10 Waterhouse was the chief financial officer of</p> <p>11 both the debtor and the HCMFA during the above</p> <p>12 events and at the time he signed the notes."</p> <p>13 Have I read that correctly?</p> <p>14 A. You did.</p> <p>15 Q. Does that refresh your recollection</p> <p>16 that at the time you signed this declaration</p> <p>17 you believed that Mr. Waterhouse was HCMFA's</p> <p>18 CFO at the time he signed the notes?</p> <p>19 A. It does.</p> <p>20 Q. Okay. During your investigation did</p> <p>21 Mr. Waterhouse ever tell you that he signed the</p> <p>22 notes by mistake?</p> <p>23 A. No.</p> <p>24 Q. Did you ever ask Mr. Waterhouse</p> <p>25 during your investigation whether he signed the</p>
<p>Page 52</p> <p>1 D. Sauter</p> <p>2 notes by mistake?</p> <p>3 A. I guess I'd like to clarify that</p> <p>4 response, if I may.</p> <p>5 Q. Go right ahead.</p> <p>6 A. I asked Mr. Waterhouse why he would</p> <p>7 have signed it – the notes in his personal</p> <p>8 capacity.</p> <p>9 And his response was, I don't know,</p> <p>10 I didn't prepare them.</p> <p>11 So I don't know if that gives you</p> <p>12 the answer you're looking for, but there was</p> <p>13 some confusion about the execution of those</p> <p>14 notes.</p> <p>15 Q. Okay. Did he say anything else</p> <p>16 that – on the topic of whether signing the</p> <p>17 notes was a mistake?</p> <p>18 A. No.</p> <p>19 Q. Okay. Your declaration doesn't</p> <p>20 disclose what you just described for me.</p> <p>21 Correct?</p> <p>22 A. Not in those exact words, no.</p> <p>23 Q. Is there anything in your</p> <p>24 declaration that suggests that Mr. Waterhouse</p> <p>25 hadn't signed the notes?</p>	<p>Page 53</p> <p>1 D. Sauter</p> <p>2 A. I don't think there's anything else</p> <p>3 in my declaration from –</p> <p>4 Q. Okay. There's nothing –</p> <p>5 (Simultaneous crosstalk.)</p> <p>6 Q. I apologize.</p> <p>7 A. – from May that would suggest that</p> <p>8 Mr. Waterhouse didn't sign the notes.</p> <p>9 Q. There's nothing in here, in your</p> <p>10 declaration, that states that Mr. Waterhouse</p> <p>11 admitted that he made a mistake in signing the</p> <p>12 notes. Correct?</p> <p>13 A. Correct.</p> <p>14 Q. There's nothing in your declaration</p> <p>15 that suggests that Mr. Waterhouse in fact did</p> <p>16 not sign or did not authorize the signing of</p> <p>17 his signature to these notes. Correct?</p> <p>18 A. Correct, because he told me he did.</p> <p>19 Q. Okay. And Mr. – he told you that</p> <p>20 he had signed the notes. Correct?</p> <p>21 A. Yes.</p> <p>22 He said that he didn't use his</p> <p>23 electronic signature then, and if his signature</p> <p>24 was on them, it would have been his.</p> <p>25 Q. Okay. Mr. Waterhouse never filed</p>

<p>Page 54</p> <p>1 D. Sauter</p> <p>2 his own declaration in support of HCMFA's</p> <p>3 motion for leave to amend their answer.</p> <p>4 Correct?</p> <p>5 A. Correct.</p> <p>6 Q. During your investigation did you</p> <p>7 ask Mr. Waterhouse if he had authority to sign</p> <p>8 the notes?</p> <p>9 A. Probably not in those exact words.</p> <p>10 Q. Okay. Did you ask him in form or</p> <p>11 substance whether he was authorized to sign the</p> <p>12 notes?</p> <p>13 A. Yes.</p> <p>14 Q. And what did he say?</p> <p>15 A. I think he – well, his response was</p> <p>16 if he signed them, he was authorized to sign</p> <p>17 them.</p> <p>18 Q. Okay. And Mr. Waterhouse never told</p> <p>19 you that he signed the notes without authority.</p> <p>20 Correct?</p> <p>21 A. He told me that – I asked him if</p> <p>22 Mr. Dondero had approved the notes.</p> <p>23 And I don't think he could recall.</p> <p>24 Q. Okay. Did Mr. Waterhouse ever tell</p> <p>25 you that he signed the notes without authority?</p>	<p>Page 55</p> <p>1 D. Sauter</p> <p>2 A. No.</p> <p>3 Q. Okay. Your declaration certainly</p> <p>4 doesn't say that Mr. Waterhouse admitted</p> <p>5 signing the notes without authority. Correct?</p> <p>6 A. Correct.</p> <p>7 Q. Mr. Waterhouse never filed a</p> <p>8 declaration in this case stating that he had</p> <p>9 filed the notes without authority. Correct?</p> <p>10 A. Correct.</p> <p>11 Q. Are you aware that Mr. Waterhouse</p> <p>12 was deposed in this case?</p> <p>13 A. I'm – yes, I'm aware.</p> <p>14 Q. Have you reviewed his deposition</p> <p>15 transcript?</p> <p>16 A. I have not.</p> <p>17 Q. Has his testimony been described for</p> <p>18 you by anybody?</p> <p>19 MR. RUKAVINA: And I'll just caution</p> <p>20 you, Mr. Sauter. You know, I think that's a</p> <p>21 yes or no answer, but don't go into the</p> <p>22 substance of any discussions with me.</p> <p>23 THE WITNESS: Yes. Okay.</p> <p>24 Yes.</p> <p>25</p>
<p>Page 56</p> <p>1 D. Sauter</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. All right. Are you aware that he</p> <p>4 testified that nobody has ever told him that he</p> <p>5 made a mistake in signing the notes?</p> <p>6 MR. RUKAVINA: Objection, form.</p> <p>7 THE WITNESS: I'm not.</p> <p>8 Q. Are you aware of anybody in the</p> <p>9 world ever telling Mr. Waterhouse that he made</p> <p>10 a mistake in signing the notes?</p> <p>11 A. Yes.</p> <p>12 Q. And who told him that?</p> <p>13 A. Me.</p> <p>14 Q. And when did you tell him that?</p> <p>15 A. When we had this discussion.</p> <p>16 Q. Okay. So it's your testimony that</p> <p>17 you actually told Mr. Waterhouse that he made a</p> <p>18 mistake in signing the notes. Right?</p> <p>19 A. I asked him who had approved these</p> <p>20 notes and what was the process.</p> <p>21 And he said he couldn't give me any</p> <p>22 process. He said the money was transferred,</p> <p>23 and so we signed the notes.</p> <p>24 Q. Okay. But did you tell him that he</p> <p>25 made a mistake?</p>	<p>Page 57</p> <p>1 D. Sauter</p> <p>2 A. I think I implied it.</p> <p>3 Q. Do you have a recollection of</p> <p>4 actually telling him that he made a mistake?</p> <p>5 A. That would be my recollection.</p> <p>6 Obviously he disagrees with it.</p> <p>7 Q. Do you know if any – and on what</p> <p>8 basis did you conclude that he made a mistake?</p> <p>9 Withdrawn.</p> <p>10 You have no personal knowledge of</p> <p>11 anything that happened in connection with the</p> <p>12 TerreStar valuation issue. Correct?</p> <p>13 A. I was not personally involved in the</p> <p>14 TerreStar valuation issue, correct.</p> <p>15 Q. You weren't involved in any of the</p> <p>16 decisions that were made in connection with the</p> <p>17 TerreStar valuation. Correct?</p> <p>18 A. Correct.</p> <p>19 Q. You weren't made – you weren't</p> <p>20 involved and had no responsibility for HCMFA's</p> <p>21 response to the SEC. Correct?</p> <p>22 A. Correct.</p> <p>23 Q. You had no responsibility or</p> <p>24 involvement in the decision as to how HCMFA was</p> <p>25 going to fund the losses to the GAF. Correct?</p>

<p style="text-align: right;">Page 58</p> <p>1 D. Sauter</p> <p>2 A. Correct.</p> <p>3 Q. You had no responsibility or</p> <p>4 involvement in how HCMFA reported to GAF.</p> <p>5 Correct?</p> <p>6 A. Correct.</p> <p>7 Q. But nevertheless, despite having no</p> <p>8 personal knowledge of those issues, you told</p> <p>9 Mr. Waterhouse or implied to Mr. Waterhouse</p> <p>10 that he made a mistake in executing the notes.</p> <p>11 Correct?</p> <p>12 A. Correct.</p> <p>13 Q. What did Mr. Waterhouse say in</p> <p>14 response?</p> <p>15 A. Not much. He just disagreed.</p> <p>16 Q. Did he just say, I disagree, and</p> <p>17 that's it or did he actually – do you recall</p> <p>18 anything specific that he said?</p> <p>19 A. I think I've already testified he</p> <p>20 said, we transferred the money, so I executed</p> <p>21 the notes. HCMFA didn't have the money to pay</p> <p>22 GAF, and so we transferred it from HCMLP and I</p> <p>23 executed the notes.</p> <p>24 Q. Okay. Your declaration doesn't</p> <p>25 attribute any specific statements to</p>	<p style="text-align: right;">Page 59</p> <p>1 D. Sauter</p> <p>2 Mr. Waterhouse, does it?</p> <p>3 A. It does not.</p> <p>4 Q. In fact, your declaration is just –</p> <p>5 withdrawn.</p> <p>6 If we can go to Paragraph 30.</p> <p>7 Take a look at Paragraph 30. We'll</p> <p>8 kind of parse it through.</p> <p>9 The first sentence says: "It</p> <p>10 appears clear that Mr. Waterhouse made a</p> <p>11 mistake."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. But again, Mr. Waterhouse never</p> <p>15 admitted to making a mistake. Correct?</p> <p>16 A. Correct.</p> <p>17 Q. And this is your – this is a</p> <p>18 conclusion that you're reaching in May of 2021,</p> <p>19 more than two years after the fact. Correct?</p> <p>20 A. Based upon my review of the</p> <p>21 documents and my discussions with Mr. Post and</p> <p>22 Mr. Norris.</p> <p>23 Q. Did you ever have any discussions</p> <p>24 with Mr. Dondero in May of 2021 as you were</p> <p>25 preparing this document?</p>
<p style="text-align: right;">Page 60</p> <p>1 D. Sauter</p> <p>2 A. Did I have any discussions with him</p> <p>3 about this?</p> <p>4 Q. I apologize. That was a bad</p> <p>5 question.</p> <p>6 Did you discuss in May of 2021 the</p> <p>7 issues concerning the notes with Mr. Dondero,</p> <p>8 or was that just part of the initial</p> <p>9 investigation?</p> <p>10 A. I don't recall.</p> <p>11 Q. And then a couple of lines down, you</p> <p>12 say – you wrote: "It appears that</p> <p>13 Mr. Waterhouse assumed incorrectly that the</p> <p>14 funds being paid by the debtor were a loan to</p> <p>15 HCMFA."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Did you ask Mr. Waterhouse if he</p> <p>19 actually made the assumption that you're</p> <p>20 attributing to him?</p> <p>21 A. Yes.</p> <p>22 Q. And did he ever admit that the</p> <p>23 assumption was incorrect?</p> <p>24 A. He did not admit that the assumption</p> <p>25 was incorrect.</p>	<p style="text-align: right;">Page 61</p> <p>1 D. Sauter</p> <p>2 Q. Okay. Again, that's your own</p> <p>3 conclusion. Is that fair?</p> <p>4 A. That's correct.</p> <p>5 Q. And then you continue on and you</p> <p>6 write: "Third" – withdrawn.</p> <p>7 You write: "Third, it therefore</p> <p>8 appears that Mr. Waterhouse prepared the notes</p> <p>9 for some internal accounting or other purpose</p> <p>10 but without there being actual consideration</p> <p>11 for the notes and without any intention on the</p> <p>12 part of the debtor and HCMFA that there be</p> <p>13 notes or that there be a loan transaction."</p> <p>14 Have I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. So did Mr. Waterhouse tell you that</p> <p>17 he prepared the notes for some internal</p> <p>18 accounting or other purpose?</p> <p>19 A. Yes.</p> <p>20 Q. And did he tell you what the purpose</p> <p>21 of the notes was?</p> <p>22 A. Yes.</p> <p>23 He said if he transferred money he</p> <p>24 had to have a note to go with it.</p> <p>25 Q. You state in your declaration:</p>

<p>Page 62</p> <p>1 D. Sauter</p> <p>2 "There was no" – withdrawn.</p> <p>3 You state in your declaration that</p> <p>4 there was no "intention on the part of the</p> <p>5 debtor and HCMFA that there be notes or that</p> <p>6 there be a loan transaction."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. What's the basis for –</p> <p>10 MR. RUKAVINA: Object to the form.</p> <p>11 I apologize. I apologize, John.</p> <p>12 I apologize, DC.</p> <p>13 I'll just object to the form.</p> <p>14 That's not what this says.</p> <p>15 Go ahead.</p> <p>16 MR. MORRIS: Well, then let me</p> <p>17 restate it if I read it incorrectly.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Mr. Sauter, does the last sentence</p> <p>20 of your Paragraph 30 state, among other things,</p> <p>21 that the notes were prepared "without any</p> <p>22 intention on the part of the debtor and HCMFA</p> <p>23 that there be notes or that there be a loan</p> <p>24 transaction"?</p> <p>25 A. Yes.</p>	<p>Page 63</p> <p>1 D. Sauter</p> <p>2 Q. What's the basis for your sworn</p> <p>3 statement concerning the debtor's intentions?</p> <p>4 MR. RUKAVINA: Again, I'll object.</p> <p>5 Just so that we're clear, Mr. Sauter</p> <p>6 says "it appears that." He does not say it is</p> <p>7 a fact. He says "it appears that." There is a</p> <p>8 distinction there.</p> <p>9 MR. MORRIS: Okay. You've got your</p> <p>10 objection.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. What's the basis for your statement</p> <p>13 that it appeared the debtor had no intention</p> <p>14 that there would be notes or that there would</p> <p>15 be a loan transaction?</p> <p>16 A. If you're talking about a</p> <p>17 \$7.4 million obligation, I would assume that</p> <p>18 there would be a process internally on who was</p> <p>19 responsible for the payment of the fees for</p> <p>20 the – or the expenses for the NAV error.</p> <p>21 Based upon my discussions with Frank</p> <p>22 Waterhouse, there was no process or the legal</p> <p>23 department was not involved in making a</p> <p>24 determination as to whether there should be</p> <p>25 notes. It was merely a ministerial act that</p>
<p>Page 64</p> <p>1 D. Sauter</p> <p>2 accounting performed when they transferred the</p> <p>3 funds to pay GAF.</p> <p>4 Q. Is it your testimony as the general</p> <p>5 counsel of Nexpoint that the law department or</p> <p>6 the legal department is involved in every note</p> <p>7 that's executed by one of the Highland</p> <p>8 affiliates?</p> <p>9 MR. RUKAVINA: Object to the form.</p> <p>10 THE WITNESS: I can't answer that.</p> <p>11 Q. Okay. So other than the fact that</p> <p>12 it didn't go past the legal department, do you</p> <p>13 have any other basis for your statement that it</p> <p>14 appears that the debtor had no intention that</p> <p>15 there would be notes?</p> <p>16 A. Yes, there's an internal NAV error</p> <p>17 correction policy that obligates the</p> <p>18 responsible party to pay for it.</p> <p>19 In this case it was HCMLP that made</p> <p>20 the NAV error.</p> <p>21 Q. There's a policy that you're</p> <p>22 referring to?</p> <p>23 A. Yes.</p> <p>24 Q. And do you know when that policy was</p> <p>25 adopted?</p>	<p>Page 65</p> <p>1 D. Sauter</p> <p>2 A. I don't know for certain.</p> <p>3 But I know there was a policy in</p> <p>4 place as of 2018.</p> <p>5 Q. Okay. Other than the policy, have</p> <p>6 you ever seen any memo written – withdrawn.</p> <p>7 Have you ever seen any document in</p> <p>8 the world that states that HCMLP is responsible</p> <p>9 for the TerreStar NAV error?</p> <p>10 A. I would say the memos that</p> <p>11 acknowledged that there was a mistake.</p> <p>12 Q. And is it your recollection that the</p> <p>13 memos specifically say that HCMLP was</p> <p>14 responsible for the mistake?</p> <p>15 A. No, because the memos were vis-à-vis</p> <p>16 HCMFA and GAF.</p> <p>17 Q. Okay. So let me ask you the</p> <p>18 question again.</p> <p>19 During the course of your two</p> <p>20 investigations, did you ever see a document</p> <p>21 that stated that HCMLP was responsible for the</p> <p>22 TerreStar NAV error?</p> <p>23 A. I don't recall.</p> <p>24 Q. You don't recall seeing one. Is</p> <p>25 that correct?</p>

<p style="text-align: right;">Page 66</p> <p>1 D. Sauter</p> <p>2 A. That's correct.</p> <p>3 Q. Okay.</p> <p>4 A. Can we take a quick break?</p> <p>5 Q. Yeah, now would be perfectly fine.</p> <p>6 Give me just one second before we go</p> <p>7 off the record.</p> <p>8 So it's 2:15 local time. Can we</p> <p>9 limit it to ten minutes, Mr. Sauter?</p> <p>10 A. Yeah, that would be fine.</p> <p>11 Q. Okay. And I would ask that you're</p> <p>12 still under oath, and I would ask that you not</p> <p>13 speak with counsel or communicate with anybody</p> <p>14 about the substance of your deposition.</p> <p>15 Is that fair?</p> <p>16 MR. RUKAVINA: Don't answer that</p> <p>17 question, Mr. Sauter.</p> <p>18 The law is what it is, and we're not</p> <p>19 going to agree to something (audio issue) than</p> <p>20 the law requires.</p> <p>21 MR. MORRIS: Well, then I'm not</p> <p>22 going to take a break. How about that?</p> <p>23 Let's keep going.</p> <p>24 MR. RUKAVINA: No, we're taking a</p> <p>25 break and I'm going to the restroom.</p>	<p style="text-align: right;">Page 67</p> <p>1 D. Sauter</p> <p>2 MR. MORRIS: We're not taking a</p> <p>3 break, bud. I'm not –</p> <p>4 (Simultaneous crosstalk.)</p> <p>5 MR. RUKAVINA: We'll be back in ten</p> <p>6 minutes.</p> <p>7 MR. MORRIS: Hey, Davor, I'm going</p> <p>8 to ask your client a question. Okay?</p> <p>9 (Simultaneous crosstalk.)</p> <p>10 MR. RUKAVINA: – but we're not –</p> <p>11 I'm sorry.</p> <p>12 You can ask him afterwards who he's</p> <p>13 talked to and about what, but you don't get to</p> <p>14 tell him that he can't talk to anyone.</p> <p>15 So let's go take a piss break and be</p> <p>16 back in nine minutes.</p> <p>17 MR. MORRIS: Put that on the record.</p> <p>18 (Recess was taken from 2:17 p.m. to</p> <p>19 2:28 p.m.)</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Are you ready to proceed, Mr.</p> <p>22 Sauter?</p> <p>23 A. I am.</p> <p>24 Q. During the break did you speak to</p> <p>25 anybody about the substance of your testimony?</p>
<p style="text-align: right;">Page 68</p> <p>1 D. Sauter</p> <p>2 A. I did not.</p> <p>3 Q. Okay. Did you communicate with</p> <p>4 anybody about the substance of your testimony?</p> <p>5 A. I did not.</p> <p>6 Q. I want to stick with the focus on</p> <p>7 the debtor's intent as stated in Paragraph 30.</p> <p>8 Before you prepared your</p> <p>9 declaration, did you spend any time reviewing</p> <p>10 any of the debtor's bankruptcy filings?</p> <p>11 A. Yes.</p> <p>12 Q. And are you aware that throughout</p> <p>13 the bankruptcy the debtor disclosed these notes</p> <p>14 as assets of the estate?</p> <p>15 A. Yes.</p> <p>16 Q. And what documents did you review</p> <p>17 that led you to conclude that the debtor was</p> <p>18 disclosing the notes as assets of the estate?</p> <p>19 Do you recall?</p> <p>20 A. I mean, I would have known it from</p> <p>21 the schedules. I would have known it from your</p> <p>22 complaint.</p> <p>23 Q. Okay. So you reviewed the debtor's</p> <p>24 schedules of assets and liabilities prior to</p> <p>25 the time you signed your declaration. Is that</p>	<p style="text-align: right;">Page 69</p> <p>1 D. Sauter</p> <p>2 right?</p> <p>3 A. Well, I didn't review them in</p> <p>4 connection with my preparation of the</p> <p>5 declaration, but yes, I had reviewed them.</p> <p>6 Q. And in reviewing them, did you learn</p> <p>7 that the debtor had in fact carried the notes</p> <p>8 as assets on its balance sheet or on its</p> <p>9 schedules of assets and liabilities?</p> <p>10 MR. RUKAVINA: I'm going to object</p> <p>11 to the form.</p> <p>12 THE WITNESS: I was aware that the</p> <p>13 debtor sought to collect on the note from</p> <p>14 HCMFA, the notes.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Are you aware that Mr. Dondero was</p> <p>17 in control of Highland Capital Management, LP</p> <p>18 from at least the date of the bankruptcy filing</p> <p>19 in October 2019 through around January 9th,</p> <p>20 2020?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Are you aware that, while</p> <p>23 Mr. Dondero was in control of the debtor during</p> <p>24 that period, that Highland filed statements of</p> <p>25 financial affairs and schedules of assets?</p>

<p>Page 70</p> <p>1 D. Sauter</p> <p>2 A. Generally, I guess, yes.</p> <p>3 But I'm not aware of a particular</p> <p>4 document called statement of financial affairs.</p> <p>5 Q. Are you aware that while Mr. Dondero</p> <p>6 was in control of Highland during the</p> <p>7 bankruptcy, the debtor filed documents stating</p> <p>8 that the notes were assets of the estate?</p> <p>9 A. I was not.</p> <p>10 Q. Okay. Did you ever, as part of your</p> <p>11 investigation, try to see how the debtor</p> <p>12 treated the notes in its court filings?</p> <p>13 A. I did not, beyond the filing of the</p> <p>14 complaint.</p> <p>15 Q. So you never had a conversation with</p> <p>16 anybody – withdrawn.</p> <p>17 Did you ever ask Mr. Waterhouse how</p> <p>18 the debtor treated the notes in its books and</p> <p>19 records?</p> <p>20 A. No.</p> <p>21 Q. Did you ever ask Mr. Waterhouse how</p> <p>22 HCMFA treated the notes in its books and</p> <p>23 records?</p> <p>24 A. No.</p> <p>25 Q. Have you been following developments</p>	<p>Page 71</p> <p>1 D. Sauter</p> <p>2 in this particular adversary proceeding?</p> <p>3 A. Yes.</p> <p>4 Q. Are you aware that both HCMFA and</p> <p>5 Highland disclosed the existence of the notes</p> <p>6 to their outside auditors within 30 days of</p> <p>7 their execution?</p> <p>8 MR. RUKAVINA: Objection, form.</p> <p>9 THE WITNESS: Yes.</p> <p>10 And it's my understanding that's why</p> <p>11 the notes were prepared.</p> <p>12 Q. And what's that understanding based</p> <p>13 on?</p> <p>14 MR. RUKAVINA: And now, Mr. Sauter,</p> <p>15 let's be very careful here.</p> <p>16 Please answer only if it's based on</p> <p>17 factual information that a nonlawyer told you.</p> <p>18 THE WITNESS: Yeah. I believe</p> <p>19 Mr. Waterhouse told me that he needed a note to</p> <p>20 document the transfer of funds.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Okay. But I asked you a different</p> <p>23 question, and that's simply whether or not</p> <p>24 you're aware as you sit here today whether</p> <p>25 HCMFA and Highland disclosed the existence of</p>
<p>Page 72</p> <p>1 D. Sauter</p> <p>2 the notes to the outside auditors.</p> <p>3 MR. RUKAVINA: I'll object again.</p> <p>4 THE WITNESS: Yes, I am aware.</p> <p>5 Q. Have you ever seen HCMFA's audited</p> <p>6 financial statements?</p> <p>7 A. I don't recall.</p> <p>8 I think you asked me that earlier.</p> <p>9 And I may have seen them, but I don't recall</p> <p>10 specifically.</p> <p>11 Q. Do you recall looking at the audited</p> <p>12 financial statements as part of your</p> <p>13 investigation?</p> <p>14 A. No.</p> <p>15 Q. Let's put up HCMFA's audited</p> <p>16 financial statements for the period ending</p> <p>17 December 31st, 2018. And it's previously been</p> <p>18 marked as Deposition Exhibit 45.</p> <p>19 (Exhibit 45, Consolidated Financial</p> <p>20 Statements and Supplemental Information</p> <p>21 December 31, 2018, D-CNL002273-296, previously</p> <p>22 marked for identification.)</p> <p>23 Q. Do you see the first page there?</p> <p>24 This is the HCMFA consolidated</p> <p>25 financial statements for the period ending</p>	<p>Page 73</p> <p>1 D. Sauter</p> <p>2 December 31st, 2018.</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. And I think you said you may have</p> <p>6 seen it before.</p> <p>7 Did I get that wrong?</p> <p>8 A. I said I may have.</p> <p>9 In looking at this, I don't think</p> <p>10 I've ever seen this document.</p> <p>11 Q. Okay. Can we just go to the third</p> <p>12 page and see the date.</p> <p>13 Do you see that this is the report</p> <p>14 of the independent auditors</p> <p>15 PricewaterhouseCoopers?</p> <p>16 A. Yes.</p> <p>17 Q. And you do see it's dated June 3rd,</p> <p>18 2019?</p> <p>19 A. Yes.</p> <p>20 Q. And do you understand that this</p> <p>21 document was prepared by HCMFA's outside</p> <p>22 auditors prior to Highland's bankruptcy filing?</p> <p>23 A. That's what it purports to be.</p> <p>24 Q. Okay. And it also purports to have</p> <p>25 been prepared prior to the commencement of the</p>

<p>Page 74</p> <p>1 D. Sauter</p> <p>2 adversary proceeding as you understand the</p> <p>3 timing. Correct?</p> <p>4 A. Yep.</p> <p>5 Q. Let's go to Page 17, please.</p> <p>6 Do you see there's a section in the</p> <p>7 audited financial statements called Subsequent</p> <p>8 Events?</p> <p>9 A. Yep.</p> <p>10 Q. Do you have any understanding as to</p> <p>11 what a Subsequent Events section is in audited</p> <p>12 financial statements?</p> <p>13 A. Yes.</p> <p>14 Q. What's your understanding of what</p> <p>15 that section is supposed to include?</p> <p>16 A. It's intended to pick up events that</p> <p>17 occurred after the date of the financials but</p> <p>18 prior to the date the financials are</p> <p>19 executed – or issued.</p> <p>20 Q. And do you see in the second</p> <p>21 paragraph there's a description of the two</p> <p>22 notes?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. You were not aware that the</p> <p>25 two notes were included in HCMFA's audited</p>	<p>Page 75</p> <p>1 D. Sauter</p> <p>2 financial statements for – as subsequent</p> <p>3 events at the time you executed your</p> <p>4 declaration. Correct?</p> <p>5 A. Correct.</p> <p>6 Q. Now that you know that, do you think</p> <p>7 HCMFA made a mistake in including these notes</p> <p>8 in the audited financial statements, or does it</p> <p>9 cause you to reconsider your conclusion that</p> <p>10 the issuance of the notes was a mistake?</p> <p>11 MR. RUKAVINA: I'll object to that</p> <p>12 question based on form.</p> <p>13 THE WITNESS: You're asking me for</p> <p>14 my legal conclusion?</p> <p>15 Q. No, I'm not actually, but it</p> <p>16 probably wasn't a great question.</p> <p>17 So your conclusion was that the</p> <p>18 execution of the notes was a mistake. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. But HCMFA is reporting the notes as</p> <p>21 part of its audited financial statements.</p> <p>22 Correct?</p> <p>23 A. Yes.</p> <p>24 Q. And do you understand that these</p> <p>25 financial statements have been audited by</p>
<p>Page 76</p> <p>1 D. Sauter</p> <p>2 independent – an independent outside firm</p> <p>3 called PricewaterhouseCoopers?</p> <p>4 A. I assume they're audited financials.</p> <p>5 And yes, what you've shown me, it</p> <p>6 appears as though they were prepared by</p> <p>7 PricewaterhouseCoopers.</p> <p>8 Q. Okay. Would you agree with me that</p> <p>9 it's inconsistent that the notes can't be both</p> <p>10 a mistake and be reported as valid obligations</p> <p>11 in the audited financial statements?</p> <p>12 MR. RUKAVINA: I'll object.</p> <p>13 This witness is not an expert. He</p> <p>14 has no personal knowledge. This is well</p> <p>15 outside the scope of his factual investigation</p> <p>16 in May of 2021.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. You can answer, sir.</p> <p>19 A. I would agree that the two</p> <p>20 statements are at odds with one another.</p> <p>21 Q. Okay. So I'm just asking you</p> <p>22 whether – now that you know that HCMFA</p> <p>23 included these in the audited financial</p> <p>24 statements, does that cause you to question at</p> <p>25 all your conclusion that the execution of the</p>	<p>Page 77</p> <p>1 D. Sauter</p> <p>2 notes was a mistake?</p> <p>3 MR. RUKAVINA: I'll again object.</p> <p>4 This witness is not an expert. He's</p> <p>5 not going to be a trial expert. And a motion</p> <p>6 to amend has already been agreed upon and ruled</p> <p>7 upon.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. You can answer, sir.</p> <p>10 A. I would say that the audited</p> <p>11 financials were prepared by</p> <p>12 PricewaterhouseCoopers with input from the</p> <p>13 accounting team.</p> <p>14 And as I stated previously, I think</p> <p>15 there was an – a breakdown in the process that</p> <p>16 should have occurred, and had others looked at</p> <p>17 this, they wouldn't have come to the same</p> <p>18 conclusion.</p> <p>19 Q. So do you believe, based on the</p> <p>20 investigation that you did, that a second</p> <p>21 mistake occurred not only in signing the notes</p> <p>22 but including them in the audited financial</p> <p>23 statements?</p> <p>24 MR. RUKAVINA: Again, I'll object.</p> <p>25 This witness is not an expert. He</p>

<p>Page 78</p> <p>1 D. Sauter</p> <p>2 has no personal knowledge.</p> <p>3 THE WITNESS: Yeah, I can't tell you</p> <p>4 whether that's a mistake.</p> <p>5 My experience is that generally</p> <p>6 accounting folks internally said that.</p> <p>7 So if the accounting folks made a</p> <p>8 determination that the notes should be included</p> <p>9 as a subsequent event, then the auditors would</p> <p>10 include it as a subsequent event.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. Do you know, is there anybody</p> <p>13 at HCMFA who's responsible for overseeing the</p> <p>14 preparation of the audited financial</p> <p>15 statements?</p> <p>16 A. I think Mr. Waterhouse.</p> <p>17 Q. When did you first learn that the</p> <p>18 notes had been included in the financial</p> <p>19 statements?</p> <p>20 Are you learning that for the first</p> <p>21 time right now or did you know that before</p> <p>22 today?</p> <p>23 A. I think I heard that a couple weeks</p> <p>24 ago.</p> <p>25 MR. RUKAVINA: Let's be careful here</p>	<p>Page 79</p> <p>1 D. Sauter</p> <p>2 again, Mr. Sauter, to exclude our</p> <p>3 communications, please.</p> <p>4 THE WITNESS: Okay.</p> <p>5 Q. Do you know if HCMFA ever reached</p> <p>6 out to PricewaterhouseCoopers to inform them</p> <p>7 that their audited financial statements were</p> <p>8 incorrect?</p> <p>9 A. I don't know.</p> <p>10 Q. Do you know whether the debtor</p> <p>11 included reference to the notes in its audited</p> <p>12 financial statements?</p> <p>13 A. I don't.</p> <p>14 Q. Let's go back to your declaration,</p> <p>15 please, Paragraph 28.</p> <p>16 Okay. So Paragraph 28 says: "The</p> <p>17 debtor accepted responsibility to HCMFA for</p> <p>18 having caused the NAV error, and the debtor</p> <p>19 ultimately, whether through insurance or its</p> <p>20 own funds, compensated HCMFA for the above</p> <p>21 payments."</p> <p>22 Have I read that correctly?</p> <p>23 A. Correct.</p> <p>24 Q. Paragraph 28 doesn't cite any source</p> <p>25 for that statement. Right?</p>
<p>Page 80</p> <p>1 D. Sauter</p> <p>2 A. Correct.</p> <p>3 Q. Okay. You don't attribute that</p> <p>4 statement to any particular person. Correct?</p> <p>5 A. That's correct.</p> <p>6 Q. What is the basis for your statement</p> <p>7 that the debtor accepted responsibility to</p> <p>8 HCMFA?</p> <p>9 A. It would be that the debtor's</p> <p>10 employees who performed the valuation function</p> <p>11 acknowledged that they had made a mistake.</p> <p>12 Q. And who are those employees?</p> <p>13 A. Well, ultimately I don't know</p> <p>14 exactly who it was that came to that</p> <p>15 determination, but I think it was Frank</p> <p>16 Waterhouse and Thomas Surgent.</p> <p>17 Q. Did you ever interview Mr. Surgent</p> <p>18 as part of your investigation?</p> <p>19 A. No, I was prohibited from speaking</p> <p>20 with him.</p> <p>21 Q. So you're not aware of</p> <p>22 Mr. Waterhouse ever saying that the debtor</p> <p>23 accepted responsibility – withdrawn.</p> <p>24 You're not aware of Mr. Surgent –</p> <p>25 withdrawn.</p>	<p>Page 81</p> <p>1 D. Sauter</p> <p>2 You have no personal knowledge that</p> <p>3 Mr. Surgent accepted, on behalf of the debtor,</p> <p>4 responsibility for the NAV error. Correct?</p> <p>5 A. I have no personal knowledge of</p> <p>6 that, correct.</p> <p>7 Q. Okay. And did Mr. Waterhouse tell</p> <p>8 you that the debtor accepted responsibility to</p> <p>9 HCMFA for having caused the NAV error?</p> <p>10 A. I think Mr. Waterhouse said that the</p> <p>11 HCMFA employees who formed the valuation</p> <p>12 committee ultimately concluded that they had</p> <p>13 made a mistake and they needed to accept that.</p> <p>14 Q. Okay. It doesn't say that in your</p> <p>15 declaration, does it?</p> <p>16 A. Doesn't say what?</p> <p>17 Q. That Mr. Waterhouse told you that.</p> <p>18 A. No.</p> <p>19 Q. In fact, is there any particular</p> <p>20 reason why you didn't share that with the</p> <p>21 court?</p> <p>22 A. No.</p> <p>23 Q. Is there anything in writing that</p> <p>24 you've ever seen which states that the debtor</p> <p>25 accepts responsibility to HCMFA for having</p>

<p>Page 82</p> <p>1 D. Sauter</p> <p>2 caused the NAV error?</p> <p>3 A. Other than what I've identified, no.</p> <p>4 Q. And what you've identified is that</p> <p>5 policy. Is that right?</p> <p>6 A. There's a policy and the</p> <p>7 acknowledgment that the NAV error was made by</p> <p>8 the HCMLP employees who were on the valuation</p> <p>9 committee.</p> <p>10 Q. Okay. You're aware that shortly</p> <p>11 after HCMFA paid the \$7.4 million to the fund,</p> <p>12 HCMFA sent the fund a written report. Is that</p> <p>13 right?</p> <p>14 A. Yes.</p> <p>15 Q. Let's take a look at that, if we can</p> <p>16 put that on the screen.</p> <p>17 MS. CANTY: Sorry, John, you went</p> <p>18 out for a second.</p> <p>19 Can you say that again.</p> <p>20 MR. MORRIS: Yeah.</p> <p>21 If you could, I think -- I think I</p> <p>22 had it listed as Exhibit 37, but it's one of</p> <p>23 the new ones. It's the memo, I think, from</p> <p>24 HCMFA to the funds.</p> <p>25 MS. CANTY: Got it.</p>	<p>Page 83</p> <p>1 D. Sauter</p> <p>2 (Exhibit 182, Memo dated 5/28/19,</p> <p>3 previously marked for identification.)</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Is this one of the memos that -- and</p> <p>6 again, Mr. Sauter, if you need to see more of</p> <p>7 it, just let me know.</p> <p>8 But is this one of the memos that</p> <p>9 you saw as part of your investigation?</p> <p>10 A. I believe so.</p> <p>11 Q. Okay. And do you understand that</p> <p>12 this is a memo from HCMFA to the board of the</p> <p>13 Highland Global Allocation Fund?</p> <p>14 A. Yes.</p> <p>15 Q. And this is where HCMFA describes</p> <p>16 for the board the resolution of the NAV error.</p> <p>17 Correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And did you discuss this memo</p> <p>20 with anybody as part of your investigation?</p> <p>21 A. I mean, other than reviewing it, no.</p> <p>22 Q. So -- and how did you obtain a copy</p> <p>23 of it?</p> <p>24 A. Mr. Post.</p> <p>25 Q. So Mr. Post gave it to you.</p>
<p>Page 84</p> <p>1 D. Sauter</p> <p>2 But you didn't speak with him about</p> <p>3 it in substance. Correct?</p> <p>4 A. I mean, I spoke to him about the</p> <p>5 transaction and the mistake.</p> <p>6 I did the same thing with Dustin</p> <p>7 Norris.</p> <p>8 Q. Okay. But you didn't speak with</p> <p>9 anybody about the substance of this memo.</p> <p>10 Correct?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And -- but you did see this</p> <p>13 memo before you signed your declaration.</p> <p>14 Correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And do you have an</p> <p>17 understanding of what this memo is?</p> <p>18 A. Yeah.</p> <p>19 I'd like to take a -- I'd like to</p> <p>20 see the memo in full.</p> <p>21 Q. Sure. Take your time.</p> <p>22 So just tell Ms. Canty when you want</p> <p>23 to see more and then she'll scroll.</p> <p>24 Okay. Stop right there.</p> <p>25 A. (Reviewing document.)</p>	<p>Page 85</p> <p>1 D. Sauter</p> <p>2 Yes. Okay.</p> <p>3 Q. So then the second page is this NAV</p> <p>4 error breakdown.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. All right. We'll come to that, but</p> <p>8 let's go back to the first page.</p> <p>9 Have you taken a look at the second</p> <p>10 paragraph there that begins: "The advisor and</p> <p>11 Houlihan Lokey, an independent third party</p> <p>12 expert valuation consultant approved by the</p> <p>13 board," have you read that paragraph?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. To the best of your</p> <p>16 knowledge, did HCMFA accurately define "NAV</p> <p>17 error" for the board in that paragraph?</p> <p>18 MR. RUKAVINA: Objection --</p> <p>19 THE WITNESS: As far as I know, yes.</p> <p>20 MR. RUKAVINA: This witness is not</p> <p>21 an expert and has no personal knowledge.</p> <p>22 Q. Do you have any reason to believe</p> <p>23 that HCMFA did not accurately describe for the</p> <p>24 board the definition of "NAV error"?</p> <p>25 A. No.</p>

<p>Page 86</p> <p>1 D. Sauter</p> <p>2 Q. Do you have any reason to believe –</p> <p>3 take a look at the last sentence.</p> <p>4 "The orderly determination and</p> <p>5 adoption of the weighted fair valuation</p> <p>6 methodology resulted in NAV errors in the</p> <p>7 fund."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And that's what's being defined as</p> <p>11 the NAV error. Correct?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any reason to believe</p> <p>14 that that sentence is false or misleading in</p> <p>15 any way?</p> <p>16 A. I do not.</p> <p>17 Q. Nothing you uncovered during your</p> <p>18 investigation caused you to believe that that</p> <p>19 sentence was false or misleading in any way.</p> <p>20 Correct?</p> <p>21 A. No.</p> <p>22 Q. Okay. And the advisor was the</p> <p>23 entity that made the orderly determination.</p> <p>24 Correct?</p> <p>25 A. That's what this memo says.</p>	<p>Page 87</p> <p>1 D. Sauter</p> <p>2 Q. Okay. Who's Houlihan Lokey? Do you</p> <p>3 know who Houlihan Lokey is?</p> <p>4 A. It's a third party valuation firm.</p> <p>5 Q. Do they have a good reputation?</p> <p>6 A. Yes.</p> <p>7 Q. And did they do the valuation of</p> <p>8 TerreStar?</p> <p>9 A. That's my understanding.</p> <p>10 Q. Okay. And were they retained by the</p> <p>11 advisor or by HCMLP?</p> <p>12 A. I don't know.</p> <p>13 Q. Did you ever ask anybody who hired</p> <p>14 Houlihan Lokey?</p> <p>15 A. I did not.</p> <p>16 Q. Do you know whether HCMFA utilizes</p> <p>17 Houlihan Lokey's valuation services in the</p> <p>18 ordinary course of its business?</p> <p>19 A. I don't know.</p> <p>20 I know that Houlihan Lokey has been</p> <p>21 utilized by either HCMLP, HCMFA or Nexpoint</p> <p>22 Advisors in the past.</p> <p>23 Q. And to the best of your knowledge,</p> <p>24 has – have those entities continued to use</p> <p>25 Houlihan Lokey even after May 2019?</p>
<p>Page 88</p> <p>1 D. Sauter</p> <p>2 A. I – I don't know.</p> <p>3 Q. Do you know whether anybody ever</p> <p>4 suggested that Houlihan Lokey was responsible</p> <p>5 for the valuation error?</p> <p>6 A. I don't.</p> <p>7 Q. Did you ever ask anybody if Houlihan</p> <p>8 Lokey was responsible for the valuation error?</p> <p>9 A. No.</p> <p>10 Q. Do you know if – to the best of</p> <p>11 your knowledge, this memo was given to the</p> <p>12 board by HCMFA. Correct?</p> <p>13 A. Yes.</p> <p>14 Q. Did – having reviewed the memo, is</p> <p>15 there anything that you're aware of in this</p> <p>16 memo where HCMFA tells the board that HCMLP is</p> <p>17 responsible for the NAV error?</p> <p>18 A. No.</p> <p>19 And I don't think that they would.</p> <p>20 It would be irrelevant.</p> <p>21 MR. MORRIS: I move to strike the</p> <p>22 latter portion of the answer.</p> <p>23 Q. Let's take a look at the bottom</p> <p>24 paragraph there.</p> <p>25 Do you see that there's a reference</p>	<p>Page 89</p> <p>1 D. Sauter</p> <p>2 to two different payments?</p> <p>3 A. Yes.</p> <p>4 Q. A payment of approximately</p> <p>5 \$5.2 million was made on February 15th, 2019,</p> <p>6 and a second payment of approximately</p> <p>7 \$2.4 million was made on May 2nd.</p> <p>8 Do I have that right?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know what the source of</p> <p>11 funding was for the first payment?</p> <p>12 A. I do not.</p> <p>13 Q. Did you ever ask anybody how</p> <p>14 HCMFA – withdrawn.</p> <p>15 Did you ever ask anybody what the</p> <p>16 source of HCMFA's funding was to make the</p> <p>17 payment on February 15th, 2019?</p> <p>18 A. Say that again.</p> <p>19 Q. Did you ever ask anybody what the</p> <p>20 source of HCMFA's capital was to make that</p> <p>21 payment on February 15th?</p> <p>22 A. I was told that it was a transfer</p> <p>23 from HCMLP.</p> <p>24 Q. You were told that the transfer from</p> <p>25 HCMLP was made in February of 2019?</p>

<p>Page 90</p> <p>1 D. Sauter</p> <p>2 A. Yes.</p> <p>3 Q. Who told you that?</p> <p>4 A. Mr. Waterhouse.</p> <p>5 Q. Okay. Do you know what the source</p> <p>6 was – hold on one second.</p> <p>7 And do you know what the source of</p> <p>8 the second payment was, that \$2.4 million on</p> <p>9 May 2nd, 2019?</p> <p>10 A. HCMLP.</p> <p>11 Q. Now, we saw earlier that one of the</p> <p>12 notes was for \$2.4 million on May 2nd.</p> <p>13 Do you recall that?</p> <p>14 A. Yes. Yes.</p> <p>15 Q. Okay. So is it fair – did you</p> <p>16 conclude as part of your investigation that at</p> <p>17 least the amount and the date of the payment</p> <p>18 matched the amount and the date of the note?</p> <p>19 A. I did on the second note, yes.</p> <p>20 Q. Okay. But the – neither the amount</p> <p>21 nor the date of the first payment matched the</p> <p>22 amount or the date of the second note.</p> <p>23 Correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Let's take a look at the second</p>	<p>Page 91</p> <p>1 D. Sauter</p> <p>2 page.</p> <p>3 Have you seen this before?</p> <p>4 A. I have.</p> <p>5 Q. Did you ever have any discussions</p> <p>6 with anybody at any time during your</p> <p>7 investigation about this page?</p> <p>8 A. I did at some point, and I don't</p> <p>9 recall exactly when.</p> <p>10 Q. Okay.</p> <p>11 A. But probably it may have been after</p> <p>12 the declaration.</p> <p>13 Q. Okay. Do you understand that the</p> <p>14 first – I think it's a row – shows that the</p> <p>15 total estimated net loss resulting from the NAV</p> <p>16 error was approximately \$7.44 million?</p> <p>17 A. Yes, I see that.</p> <p>18 Q. Okay. And do you understand that</p> <p>19 this chart depicts the sources that are going</p> <p>20 to be called upon to fund the \$7.44 million</p> <p>21 payment from HCMFA to the fund?</p> <p>22 A. I – yes, I understand that now.</p> <p>23 Q. And do you understand that</p> <p>24 approximately \$5 million was going to be funded</p> <p>25 through insurance proceeds?</p>
<p>Page 92</p> <p>1 D. Sauter</p> <p>2 A. That's what it appears to show.</p> <p>3 Q. And during your investigation, were</p> <p>4 you aware that HCMFA had obtained almost</p> <p>5 \$5 million in connection with the NAV error</p> <p>6 that it was using to fund the payment to GAF?</p> <p>7 A. I subsequently learned that, yes.</p> <p>8 Q. And were you aware prior to the time</p> <p>9 that you signed your declaration – I apologize</p> <p>10 if I asked this before – withdrawn.</p> <p>11 Were you aware of the almost</p> <p>12 \$5 million in insurance proceeds that was –</p> <p>13 that were obtained by HCMFA before you signed</p> <p>14 your declaration?</p> <p>15 A. I was not.</p> <p>16 Q. So that's new information for you</p> <p>17 since the time you signed your declaration?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Were you aware at the time</p> <p>20 you signed your declaration that HCMFA had paid</p> <p>21 an insurance deductible of almost \$250,000?</p> <p>22 A. I was not.</p> <p>23 Q. Is it your understanding that after</p> <p>24 the sources described in the top portion of</p> <p>25 this page, that the total amount needed by the</p>	<p>Page 93</p> <p>1 D. Sauter</p> <p>2 advisor to make GAF whole was approximately</p> <p>3 \$2.4 million?</p> <p>4 That's the 2,398,842 number there.</p> <p>5 A. I've not done the math.</p> <p>6 Q. Well, that number there matches the</p> <p>7 number in the bottom paragraph of the first</p> <p>8 page, if we can scroll back up.</p> <p>9 A. Yeah. No, I understand.</p> <p>10 Q. Okay. So that's the total payment</p> <p>11 that was made on May 2nd, 2019, according to</p> <p>12 this memo?</p> <p>13 A. That's total payment made to GAF.</p> <p>14 What I'm unclear about is that it's</p> <p>15 the total amount out of pocket from the</p> <p>16 advisor, which may be different, but...</p> <p>17 Q. Do you know what the total out of</p> <p>18 pocket was from the advisor?</p> <p>19 A. I don't.</p> <p>20 (Simultaneous crosstalk.)</p> <p>21 THE WITNESS: – what's listed here.</p> <p>22 Q. And do you understand that a total</p> <p>23 of \$7.44 million was paid by HCMFA to GAF?</p> <p>24 A. I do.</p> <p>25 Q. Okay. And do you have any reason to</p>

<p>Page 94</p> <p>1 D. Sauter</p> <p>2 believe that the source of the funding is</p> <p>3 anything other than what's set forth on this</p> <p>4 page?</p> <p>5 A. I don't.</p> <p>6 Q. And the \$2.4 million, that's the</p> <p>7 \$2.4 million that HCMFA obtained from Highland</p> <p>8 on May 2nd. Correct?</p> <p>9 MR. RUKAVINA: Objection.</p> <p>10 The witness is not qualified to</p> <p>11 answer that.</p> <p>12 Q. During the course of your</p> <p>13 investigation, did you learn that Highland</p> <p>14 transferred \$2.4 million to HCMFA on May 2nd,</p> <p>15 2019 so that it could pay GAF?</p> <p>16 A. That's what I was told.</p> <p>17 Q. Okay. Is it your conclusion that</p> <p>18 Highland was responsible for the \$7.44 million</p> <p>19 estimated net loss resulting from the NAV</p> <p>20 error?</p> <p>21 MR. RUKAVINA: Objection.</p> <p>22 This witness is not an expert, and</p> <p>23 he has no personal knowledge.</p> <p>24 THE WITNESS: Yes, I believe that</p> <p>25 that's accurate.</p>	<p>Page 95</p> <p>1 D. Sauter</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. And that's because you believe the</p> <p>4 notes were executed by mistake. Correct?</p> <p>5 A. I believe that Highland made the NAV</p> <p>6 error and was responsible for making GAF whole,</p> <p>7 albeit vis-à-vis HCMFA, its advisor.</p> <p>8 Q. Okay. So because Highland created</p> <p>9 the NAV error, your understanding based on your</p> <p>10 discussions with Mr. Post and Mr. Norris is</p> <p>11 that Highland paid the \$7.4 million to HCMFA</p> <p>12 not as a loan but as compensation for the error</p> <p>13 that it made.</p> <p>14 Do I have that right?</p> <p>15 A. That would not be based on my</p> <p>16 discussions with Mr. Post and Mr. Norris.</p> <p>17 But yes, your conclusion is</p> <p>18 accurate.</p> <p>19 Q. Okay. And let's be really clear</p> <p>20 what the conclusion is.</p> <p>21 It's your conclusion that because</p> <p>22 Highland was negligent in making the NAV error,</p> <p>23 that when it paid \$7.4 million to HCMFA on</p> <p>24 May 2nd and May 3rd, 2019, it did so as</p> <p>25 compensation for its negligent conduct and not</p>
<p>Page 96</p> <p>1 D. Sauter</p> <p>2 as a loan. Correct?</p> <p>3 A. I didn't say negligent, and I don't</p> <p>4 know that I can make that conclusion.</p> <p>5 But it should have been indemnity</p> <p>6 and reimbursement for the error that Highland</p> <p>7 created.</p> <p>8 Q. Okay. Can you tell me why HCMFA</p> <p>9 took \$5 million from an insurance company at</p> <p>10 the same time it was being made whole by</p> <p>11 Highland?</p> <p>12 MR. RUKAVINA: I'll instruct you not</p> <p>13 to answer that.</p> <p>14 That is attorney client privileged</p> <p>15 and work product.</p> <p>16 Q. Sir, as part of your investigation,</p> <p>17 did you make any assessment as to why HCMFA</p> <p>18 accepted \$5 million in proceed – in insurance</p> <p>19 proceeds at the same time it believed that the</p> <p>20 \$7.4 million was being paid by Highland as</p> <p>21 compensation?</p> <p>22 MR. RUKAVINA: Just want to make</p> <p>23 sure, Mr. Sauter, you understand that counsel</p> <p>24 is asking about your investigation in May of</p> <p>25 this year as referenced in your declaration and</p>	<p>Page 97</p> <p>1 D. Sauter</p> <p>2 not the investigation generally.</p> <p>3 THE WITNESS: Yes.</p> <p>4 And as I said, the May declaration,</p> <p>5 I was unaware of the \$5 million in insurance</p> <p>6 payments.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Now that you're aware of it, does it</p> <p>9 cause you to question your conclusion that the</p> <p>10 payment made by Highland in May of 2019 was</p> <p>11 compensation and not a loan?</p> <p>12 MR. RUKAVINA: I instruct you not to</p> <p>13 answer that, Mr. Sauter.</p> <p>14 MR. MORRIS: On what basis? That</p> <p>15 you don't like the question?</p> <p>16 MR. RUKAVINA: No.</p> <p>17 Let's be professional here, John. I</p> <p>18 don't know why you've got to get –</p> <p>19 (Simultaneous crosstalk.)</p> <p>20 MR. MORRIS: I don't understand.</p> <p>21 It's a –</p> <p>22 MR. RUKAVINA: No, you – the way –</p> <p>23 MR. MORRIS: It's an investigation.</p> <p>24 He made a conclusion in the investigation.</p> <p>25 He's now learned a new fact. I'm</p>

<p style="text-align: right;">Page 98</p> <p>1 D. Sauter</p> <p>2 allowed to ask him if it changes his</p> <p>3 conclusion.</p> <p>4 MR. RUKAVINA: Let me just explain</p> <p>5 what I understand, what's going on here.</p> <p>6 He undertook an evidentiary and</p> <p>7 factual conclusion, which is fair game for you</p> <p>8 to ask about. Pardon me.</p> <p>9 He's told you that he didn't know</p> <p>10 about this. His declaration says – I'm</p> <p>11 paraphrasing – it appears that there was a</p> <p>12 mistake.</p> <p>13 He has never claimed to have</p> <p>14 personal knowledge. He has never claimed to be</p> <p>15 an expert. He is not going to be a trial</p> <p>16 witness. He has never testified and is not</p> <p>17 testifying today that there was a mistake.</p> <p>18 But most importantly, and why I'm</p> <p>19 instructing him not to answer, is because the</p> <p>20 issue of how this payment relates to the</p> <p>21 insurance payable, which again arose after his</p> <p>22 declaration and is something that he and I have</p> <p>23 discussed and is my work product. That is not</p> <p>24 a part of his factual investigation.</p> <p>25 So I am instructing him not to</p>	<p style="text-align: right;">Page 99</p> <p>1 D. Sauter</p> <p>2 answer. There's no point in you and I arguing</p> <p>3 about it now.</p> <p>4 If you feel my objection is</p> <p>5 inappropriate, then you have your rights</p> <p>6 intact.</p> <p>7 MR. MORRIS: All right. I'm going</p> <p>8 to continue to ask questions.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Sir, you had this document before</p> <p>11 you signed your declaration. Correct?</p> <p>12 A. I did.</p> <p>13 Q. Okay. And your conclusion was that</p> <p>14 because Highland made the NAV mistake, the</p> <p>15 \$7.4 million payment was supposed to be</p> <p>16 compensation and not in the form of a loan.</p> <p>17 Correct?</p> <p>18 MR. RUKAVINA: Objection, form.</p> <p>19 THE WITNESS: Correct.</p> <p>20 Q. Okay. And now the document that you</p> <p>21 had before you signed your declaration</p> <p>22 discloses that HCMFA received almost \$5 million</p> <p>23 as part of the insurance proceeds in connection</p> <p>24 with the NAV error. Correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 100</p> <p>1 D. Sauter</p> <p>2 Q. Okay. Does that cause you to change</p> <p>3 the conclusion that you reached as set forth in</p> <p>4 your declaration?</p> <p>5 A. I don't know enough about the</p> <p>6 insurance proceeds, the insurance policy and</p> <p>7 what transpired at the time to make that</p> <p>8 determination.</p> <p>9 Q. Do you know if HCMFA has ever</p> <p>10 informed the insurance carrier that HCMLP was</p> <p>11 responsible for the NAV error?</p> <p>12 A. I do not.</p> <p>13 Q. Did you ever ask anybody?</p> <p>14 A. I did not.</p> <p>15 Q. As part of your investigation, did</p> <p>16 you try to determine whether HCMFA ever told</p> <p>17 the insurance company that HCMLP was</p> <p>18 responsible for the NAV error?</p> <p>19 A. I think I already said I wasn't</p> <p>20 aware of the insurance proceeds at the time of</p> <p>21 my declaration.</p> <p>22 Q. Has HCMFA returned all or any</p> <p>23 portion of the insurance proceeds to the</p> <p>24 carrier?</p> <p>25 A. I wouldn't know.</p>	<p style="text-align: right;">Page 101</p> <p>1 D. Sauter</p> <p>2 Q. Have you ever asked anybody?</p> <p>3 A. No.</p> <p>4 MR. RUKAVINA: You've got to wait a</p> <p>5 second, Mr. Sauter, before answering.</p> <p>6 Go ahead.</p> <p>7 Q. During the course of your</p> <p>8 investigation, did anybody tell you that on</p> <p>9 May 3rd, 2019, HCMFA needed another \$5 million?</p> <p>10 A. Not during the course of my initial</p> <p>11 investigation.</p> <p>12 Q. Are you aware of that today?</p> <p>13 A. I am, yes.</p> <p>14 Q. Okay. And do you understand that</p> <p>15 that \$5 million was needed in order for HCMFA</p> <p>16 to pay what's called a consent fee?</p> <p>17 MR. RUKAVINA: I'm going to object.</p> <p>18 And I'm going to instruct the</p> <p>19 witness not to answer.</p> <p>20 Again, this is attorney-client</p> <p>21 privilege and work product.</p> <p>22 He learned about all of this well</p> <p>23 after his investigation and well after his</p> <p>24 declaration.</p> <p>25 MR. MORRIS: These are facts.</p>

<p>Page 102</p> <p>1 D. Sauter</p> <p>2 I don't get it. These are facts.</p> <p>3 And I'm not limited to his declaration. He's</p> <p>4 here under a subpoena. I can ask him whatever</p> <p>5 I want factually.</p> <p>6 I don't understand, Davor.</p> <p>7 MR. RUKAVINA: Well, there's three</p> <p>8 things.</p> <p>9 You're generally right, you can ask</p> <p>10 him whatever you want factually. I'm not</p> <p>11 saying that he – I haven't prevented you from</p> <p>12 asking factually. That's issue one.</p> <p>13 Issue two, he's not a trial witness.</p> <p>14 His role is limited to the motion to amend,</p> <p>15 which was granted by consent.</p> <p>16 And issue three, the question you're</p> <p>17 asking him right now, if he has any knowledge,</p> <p>18 he can have only through discussions with me</p> <p>19 and things he's learned through me in this</p> <p>20 litigation. He's told you he did not know</p> <p>21 about this during his investigation.</p> <p>22 So I'm going to stick by my</p> <p>23 instruction not to answer that, Mr. Sauter.</p> <p>24 MR. MORRIS: And I'm going to tell</p> <p>25 you he is a trial witness. I will certainly be</p>	<p>Page 103</p> <p>1 D. Sauter</p> <p>2 calling him at trial because he conducted an</p> <p>3 investigation.</p> <p>4 And I don't think that I need to</p> <p>5 stop asking questions as of the date of his</p> <p>6 declaration. I'm asking purely factual</p> <p>7 questions.</p> <p>8 So you know, if you want to continue</p> <p>9 to direct him not to answer, we'll deal with</p> <p>10 it, but I'm going to continue to ask him</p> <p>11 factual questions.</p> <p>12 MR. RUKAVINA: To me, this is –</p> <p>13 (Simultaneous crosstalk.)</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Mr. Sauter, do you understand that</p> <p>16 the \$5 million was needed by HCMFA on May 3rd,</p> <p>17 2019 to pay a consent fee?</p> <p>18 MR. RUKAVINA: I'm going to instruct</p> <p>19 you not to answer that, Mr. Sauter.</p> <p>20 Q. Are you going to follow your</p> <p>21 counsel's instructions?</p> <p>22 A. I am.</p> <p>23 Q. Do you know what a consent fee is,</p> <p>24 sir?</p> <p>25 A. I don't.</p>
<p>Page 104</p> <p>1 D. Sauter</p> <p>2 Q. Did you ever have – withdrawn.</p> <p>3 Did anybody ever tell you that</p> <p>4 Highland was responsible for any consent fee</p> <p>5 that HCMFA paid?</p> <p>6 MR. RUKAVINA: You're instructed not</p> <p>7 to answer that to the extent that whoever told</p> <p>8 you that would be an attorney.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Okay. Did anybody other than an</p> <p>11 attorney ever tell you that Highland was</p> <p>12 responsible for any consent fee ever paid by</p> <p>13 HCMFA?</p> <p>14 A. That Highland was responsible for</p> <p>15 paying a consent fee?</p> <p>16 Q. That Highland was responsible for</p> <p>17 any consent fee that was paid by HCMFA.</p> <p>18 A. I don't believe so.</p> <p>19 Q. During your discussions as part of</p> <p>20 your investigation with Mr. Norris and Mr. Post</p> <p>21 and Mr. Dondero and Mr. Waterhouse, did anybody</p> <p>22 tell you why Highland paid HCMFA \$5 million on</p> <p>23 May 3rd, 2019?</p> <p>24 A. Yes.</p> <p>25 Q. And why did – what did they tell</p>	<p>Page 105</p> <p>1 D. Sauter</p> <p>2 you?</p> <p>3 A. It was payment for a consent fee.</p> <p>4 Q. All right. Okay.</p> <p>5 And who told you that?</p> <p>6 A. Mr. Norris.</p> <p>7 Q. And did Mr. Norris tell you that</p> <p>8 Highland had any responsibility for the payment</p> <p>9 of that consent fee by HCMFA?</p> <p>10 A. I don't know that we got into that.</p> <p>11 Q. Okay. Did anybody else tell you</p> <p>12 that the May 3rd, 2019 \$5 million payment was</p> <p>13 made so that HCMFA could pay the consent fee?</p> <p>14 MR. RUKAVINA: Again, I'll instruct</p> <p>15 you not to answer the extent you learned</p> <p>16 anything from an attorney.</p> <p>17 THE WITNESS: I don't believe so.</p> <p>18 Q. Okay. Did you speak with</p> <p>19 Mr. Waterhouse about the \$5 million consent fee</p> <p>20 that Mr. Norris mentioned to you?</p> <p>21 A. I have not spoken with</p> <p>22 Mr. Waterhouse for quite some time about this,</p> <p>23 since he's represented by counsel.</p> <p>24 Q. No.</p> <p>25 But as part of your investigation,</p>

<p>Page 106</p> <p>1 D. Sauter</p> <p>2 after you learned from Mr. Norris that the</p> <p>3 \$5 million was paid so that HCMFA could pay the</p> <p>4 consent fee, did you follow up with</p> <p>5 Mr. Waterhouse at all?</p> <p>6 A. I didn't know about the consent fee</p> <p>7 at the time of my investigation.</p> <p>8 Q. Okay. When did Mr. Norris tell you</p> <p>9 about the consent fee?</p> <p>10 A. Probably within the last six weeks.</p> <p>11 Q. And does learning about the consent</p> <p>12 fee from Mr. Norris cause you to question your</p> <p>13 conclusion that the \$7.4 million was paid by</p> <p>14 Highland to HCMFA on account of the mistake</p> <p>15 that Highland made on the NAV error?</p> <p>16 MR. RUKAVINA: I'll again object</p> <p>17 that this witness is not an expert and he has</p> <p>18 no personal knowledge.</p> <p>19 Q. You can answer, sir.</p> <p>20 A. I wasn't aware of the consent fee.</p> <p>21 I don't know much about the consent</p> <p>22 fee. I don't know what it is, who paid it, why</p> <p>23 they paid it, what the consideration was for</p> <p>24 it.</p> <p>25 So I'm not prepared to answer that.</p>	<p>Page 107</p> <p>1 D. Sauter</p> <p>2 Q. Okay. Let's go back to your</p> <p>3 declaration, please, Paragraph 31.</p> <p>4 Is it fair to summarize this</p> <p>5 paragraph as saying that because HCMFA and the</p> <p>6 debtor had executed that acknowledgment, that</p> <p>7 it would have been illogical for Highland to</p> <p>8 lend HCMFA \$7.4 million in May 2021?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And what was the source of</p> <p>11 your information for Paragraph 31?</p> <p>12 A. I'm not sure I follow.</p> <p>13 Q. So you've got the acknowledgment</p> <p>14 that you attached as Exhibit 4. Correct?</p> <p>15 A. Yes.</p> <p>16 Q. Did you discuss with anybody during</p> <p>17 your investigation any of the facts or</p> <p>18 conclusions that are set forth in Paragraph 31</p> <p>19 or did you – or is it based just on your</p> <p>20 review of Exhibit 4?</p> <p>21 A. Based on my review.</p> <p>22 Q. Okay. Are you aware that in</p> <p>23 May 2019, Mr. Dondero contemporaneously and</p> <p>24 personally paid Highland exactly \$7.4 million</p> <p>25 that was owed by Mr. Dondero to Highland under</p>
<p>Page 108</p> <p>1 D. Sauter</p> <p>2 a promissory note where he was the maker?</p> <p>3 A. I was not.</p> <p>4 Q. Nobody told you that as part of your</p> <p>5 investigation, that the way Highland was able</p> <p>6 to transfer the \$7.4 million to HCMFA was to</p> <p>7 get that money from Mr. Dondero on account of a</p> <p>8 note that he signed?</p> <p>9 A. No one told me that.</p> <p>10 Q. You're hearing that for the first</p> <p>11 time today?</p> <p>12 A. I am.</p> <p>13 Q. If Mr. Dondero paid down</p> <p>14 \$7.4 million in obligations that he owed to</p> <p>15 Highland, would it change your view that it was</p> <p>16 illogical for Highland to loan that money to</p> <p>17 HCMFA in May of 2019?</p> <p>18 A. Again, without seeing the documents</p> <p>19 and the timing and the details of the</p> <p>20 transaction, I can't answer that.</p> <p>21 Q. Okay. Now, the advisors have</p> <p>22 contracts with the funds they advise. Correct?</p> <p>23 A. Advisory agreements, yes.</p> <p>24 Q. And those advisory agreements are</p> <p>25 subject to annual renewal. Correct?</p>	<p>Page 109</p> <p>1 D. Sauter</p> <p>2 A. Yes.</p> <p>3 Q. As Nexpoint's general counsel, did</p> <p>4 you participate in the annual renewal process</p> <p>5 in the fall of 2020?</p> <p>6 A. I would have participated in the</p> <p>7 process, but only with respect to NXRT,</p> <p>8 Nexpoint Residential Trust and Nexpoint Real</p> <p>9 Estate Finance.</p> <p>10 Q. I see.</p> <p>11 A. I had some limited involvement in</p> <p>12 the 15(c) process with respect to Nexpoint's</p> <p>13 strategic opportunities fund, but very limited.</p> <p>14 Q. Do you know who the representative</p> <p>15 was for HCMFA who was responsible for the 15(c)</p> <p>16 annual renewal process in the fall of 2020?</p> <p>17 A. I don't.</p> <p>18 I can speculate, and I would assume</p> <p>19 it's Mr. – a combination of Mr. Norris and</p> <p>20 Mr. Sella (phonetic).</p> <p>21 Q. And why do you speculate that it's a</p> <p>22 combination of them?</p> <p>23 A. Because they were actively involved</p> <p>24 in the process just from conversations I had</p> <p>25 with them.</p>

<p style="text-align: right;">Page 110</p> <p>1 D. Sauter</p> <p>2 Q. Okay. Have you ever seen any of the</p> <p>3 reports that the advisors sent to the retail</p> <p>4 board in connection with the 15(c) annual</p> <p>5 review?</p> <p>6 MR. RUKAVINA: Now, this one,</p> <p>7 Mr. Sauter, I am going to instruct you not to</p> <p>8 answer.</p> <p>9 MR. MORRIS: Have you ever seen the</p> <p>10 document? That's what, you're going to</p> <p>11 instruct him not to –</p> <p>12 MR. RUKAVINA: Don't answer that.</p> <p>13 Don't answer that. That relates to discovery</p> <p>14 and work product privilege.</p> <p>15 The document was produced to you.</p> <p>16 Mr. Sauter helped me find that document. Other</p> <p>17 than that, nothing about that document and his</p> <p>18 knowledge is fair game.</p> <p>19 MR. MORRIS: Well, I'm going to ask</p> <p>20 my questions, and you can keep directing him</p> <p>21 not to answer.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Mr. Sauter, have you ever seen any</p> <p>24 of the reports that were issued by the advisors</p> <p>25 to the funds?</p>	<p style="text-align: right;">Page 111</p> <p>1 D. Sauter</p> <p>2 A. Could you clarify the question.</p> <p>3 Q. Sure.</p> <p>4 Have you ever seen any of the</p> <p>5 reports that were issued by the advisors to the</p> <p>6 retail board in the fall of 2020 in connection</p> <p>7 with the 15(c) review?</p> <p>8 MR. RUKAVINA: Mr. Sauter, I'm</p> <p>9 instructing you not to answer that if your</p> <p>10 answer involves working with me in this</p> <p>11 adversary proceeding.</p> <p>12 If you saw it otherwise as part of</p> <p>13 business operation, that's fine.</p> <p>14 THE WITNESS: In the fall of 2020, I</p> <p>15 would have had – I would not have been</p> <p>16 involved and I would not have seen anything</p> <p>17 sent to the board.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. All right. Well, let's put it up on</p> <p>20 the screen. It's, I think, a document that was</p> <p>21 previously marked as Deposition Exhibit 59.</p> <p>22 (Exhibit 59, Memo dated 10/23/20,</p> <p>23 HCMFAS 000025-031, marked for identification.)</p> <p>24 Q. Have you ever seen this document</p> <p>25 before, sir?</p>
<p style="text-align: right;">Page 112</p> <p>1 D. Sauter</p> <p>2 A. Could you scroll down.</p> <p>3 Q. Sure.</p> <p>4 A. (Reviewing document.)</p> <p>5 Q. We can keep going.</p> <p>6 A. All right.</p> <p>7 What's the date on this?</p> <p>8 Q. October 23rd, 2020.</p> <p>9 A. I honestly don't think I would have</p> <p>10 been involved in that or seen that.</p> <p>11 Q. Okay. Did you ever ask anybody as</p> <p>12 part of your investigation – withdrawn.</p> <p>13 Are you aware that the advisors were</p> <p>14 asked to provide information to the retail</p> <p>15 board as to the obligations that it owed to</p> <p>16 Highland and its affiliates in connection with</p> <p>17 the 15(c) annual review?</p> <p>18 A. I was not.</p> <p>19 Q. So is it fair to say that you never</p> <p>20 saw this document as part of your</p> <p>21 investigation?</p> <p>22 A. I don't think so.</p> <p>23 Q. Is it fair to say that nobody ever</p> <p>24 told you about the advisors' responses to the</p> <p>25 retail board in connection with the 15(c)</p>	<p style="text-align: right;">Page 113</p> <p>1 D. Sauter</p> <p>2 review in October of 2020?</p> <p>3 A. I think that's accurate.</p> <p>4 MR. MORRIS: We're going to do the</p> <p>5 30(b)(6) deposition on December 1st?</p> <p>6 MR. RUKAVINA: I think I'm waiting</p> <p>7 for you to confirm.</p> <p>8 I think that's what –</p> <p>9 MR. MORRIS: Let's confirm that</p> <p>10 right now.</p> <p>11 I'll send you an e-mail, but I</p> <p>12 just...</p> <p>13 MR. RUKAVINA: Okay. 10 a.m.,</p> <p>14 Dallas?</p> <p>15 MR. MORRIS: Yeah, that sounds fair.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. All right. Let's go back to your</p> <p>18 declaration, please, Paragraph 32.</p> <p>19 I'm almost done, sir.</p> <p>20 So you state, among other things,</p> <p>21 that – and I'm paraphrasing. Let me know if</p> <p>22 I – if this is fair – that as a result of</p> <p>23 your investigation in April of 2019, HCMFA now</p> <p>24 believes that it has affirmative defenses to</p> <p>25 the notes that includes the defense of mutual</p>

<p>Page 114</p> <p>1 D. Sauter</p> <p>2 mistake.</p> <p>3 Do I have that right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. What does "mutual" – excuse</p> <p>6 me – what does "mutual mistake" mean?</p> <p>7 MR. RUKAVINA: Are you asking for</p> <p>8 his legal opinion or how he used it in this</p> <p>9 declaration?</p> <p>10 MR. MORRIS: Only how he used it in</p> <p>11 the declaration.</p> <p>12 THE WITNESS: Well, wouldn't that be</p> <p>13 a legal conclusion because it's an affirmative</p> <p>14 defense?</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Well, I don't know. It's in your</p> <p>17 declaration. I'm just asking you what you</p> <p>18 meant when you used the phrase – withdrawn.</p> <p>19 Let me ask a better question. Maybe</p> <p>20 it's my fault.</p> <p>21 Mr. Sauter, what did you mean when</p> <p>22 you used the phrase "mutual mistake"?</p> <p>23 A. What I meant is that there was no</p> <p>24 analysis or consideration of what had</p> <p>25 transpired and who is legally responsible for</p>	<p>Page 115</p> <p>1 D. Sauter</p> <p>2 the payments to the fund.</p> <p>3 A transfer was made. A note was</p> <p>4 executed without any analysis.</p> <p>5 Q. And do you have anything else to add</p> <p>6 to that?</p> <p>7 A. I don't think so.</p> <p>8 Q. Okay. You also say that the notes</p> <p>9 are void for lack of consideration.</p> <p>10 Do I have that right?</p> <p>11 A. Yes.</p> <p>12 Q. You don't dispute that Highland paid</p> <p>13 HCMFA \$2.4 million on May 2nd, 2019. Correct?</p> <p>14 A. No.</p> <p>15 Q. And you don't dispute that Highland</p> <p>16 paid HCMFA \$5 million on May 3rd, 2019.</p> <p>17 Correct?</p> <p>18 A. I mean, I believe that's right.</p> <p>19 That's what I've been told.</p> <p>20 So yeah, I don't dispute that.</p> <p>21 Q. Your reference to "a lack of</p> <p>22 consideration" means only that, in your</p> <p>23 opinion, the money should not have been</p> <p>24 transferred in the form of a loan.</p> <p>25 Do I have that right?</p>
<p>Page 116</p> <p>1 D. Sauter</p> <p>2 A. You do.</p> <p>3 Q. It does not mean that HCMFA did not</p> <p>4 receive an amount of money exactly equal to the</p> <p>5 principal amount of the notes. Correct?</p> <p>6 A. Based upon what I've been told,</p> <p>7 correct.</p> <p>8 Q. Okay. You also write here that</p> <p>9 Mr. Waterhouse did not "have proper authority</p> <p>10 to sign the notes."</p> <p>11 Do I have that right?</p> <p>12 A. Yes.</p> <p>13 Q. What does "proper" – what did you</p> <p>14 mean by the phrase "proper authority"?</p> <p>15 A. I mean going through the process of</p> <p>16 what I would expect to see in making a loan of</p> <p>17 \$7.4 million.</p> <p>18 Q. So that's just your own subjective</p> <p>19 view.</p> <p>20 Is that fair?</p> <p>21 A. No.</p> <p>22 I mean, I think there's a legal</p> <p>23 basis for that, so yeah.</p> <p>24 Q. What's your legal basis for that?</p> <p>25 A. There is a process to go through in</p>	<p>Page 117</p> <p>1 D. Sauter</p> <p>2 papering a transaction like a \$7.4 million</p> <p>3 loan. And my understanding of the process, as</p> <p>4 described to me by Frank Waterhouse, was not</p> <p>5 the proper process.</p> <p>6 Q. Is there a policy or a law that</p> <p>7 requires a particular process to be followed</p> <p>8 that you're aware of?</p> <p>9 A. What I would expect is</p> <p>10 communications among the various parties that</p> <p>11 are involved and agreement that this should be</p> <p>12 a loan rather than just transferring money and</p> <p>13 sign a note.</p> <p>14 Q. You knew when you signed this</p> <p>15 declaration that Mr. Waterhouse in fact was an</p> <p>16 officer of HCMFA at the time his signature was</p> <p>17 put on the notes. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. And is it your view that an officer</p> <p>20 is not authorized to execute notes on behalf of</p> <p>21 the company for which he or she works for?</p> <p>22 A. I think every company has</p> <p>23 limitations on authority.</p> <p>24 Q. And what limits are you aware of on</p> <p>25 Mr. Waterhouse – withdrawn.</p>

<p>Page 118</p> <p>1 D. Sauter</p> <p>2 What limits are you aware of that</p> <p>3 existed on Mr. Waterhouse's authority to sign</p> <p>4 notes on behalf of HCMFA in May of 2019?</p> <p>5 A. I don't know what the HCMFA – what</p> <p>6 the partnership agreement says, or I should say</p> <p>7 the general partnership agreement says.</p> <p>8 But what I would expect is the full</p> <p>9 participation of legal, accounting and then</p> <p>10 perhaps Mr. Dondero.</p> <p>11 Q. Do you know if Mr. Waterhouse has</p> <p>12 ever signed any other notes on behalf of HCMFA</p> <p>13 or any other affiliated entity?</p> <p>14 A. I'm sure he has.</p> <p>15 Q. Did you do – as part of your</p> <p>16 investigation, before reaching your conclusion</p> <p>17 that Mr. Waterhouse didn't have proper</p> <p>18 authority, did you try to determine whether in</p> <p>19 fact he had previously issued notes on behalf</p> <p>20 of HCMFA or other affiliates?</p> <p>21 A. I can't answer your question without</p> <p>22 knowing the facts surrounding the execution of</p> <p>23 any particular note.</p> <p>24 I mean, I think it matters the</p> <p>25 amount of the note, the term of the note.</p>	<p>Page 119</p> <p>1 D. Sauter</p> <p>2 There's a number of factors that come into it.</p> <p>3 Q. But you didn't –</p> <p>4 A. So –</p> <p>5 Q. But you made no inquiry as to any of</p> <p>6 those issues. Correct?</p> <p>7 A. I made an inquiry of Mr. Waterhouse</p> <p>8 as it relates to this transaction.</p> <p>9 Q. Okay. And again, Mr. Waterhouse did</p> <p>10 not admit that he was not authorized to sign</p> <p>11 these notes. Correct?</p> <p>12 A. Sorry. He did not admit that he was</p> <p>13 not authorized to sign the notes, correct.</p> <p>14 Q. Okay.</p> <p>15 MR. MORRIS: Let's just take a</p> <p>16 five-minute break. I may be done.</p> <p>17 It's 4:28. Let's just come back at</p> <p>18 4:35 so I can take a break.</p> <p>19 (Recess was taken from 3:29 p.m. to</p> <p>20 3:37 p.m.)</p> <p>21 MR. MORRIS: Mr. Sauter, I greatly</p> <p>22 appreciate your time and attention today. I</p> <p>23 have no further questions.</p> <p>24 THE WITNESS: Okay.</p> <p>25 MR. RUKAVINA: I'll pass the</p>
<p>Page 120</p> <p>1 D. Sauter</p> <p>2 witness, save my questions till trial. Thank</p> <p>3 you.</p> <p>4 MR. MORRIS: Thank you, sir. Have a</p> <p>5 good day.</p> <p>6 MR. RUKAVINA: Madam Reporter, just</p> <p>7 before we're done, just to confirm, the witness</p> <p>8 does want his 30 days to read and review, so</p> <p>9 please send the transcript to me with exhibits.</p> <p>10 THE REPORTER: And Michael, do you</p> <p>11 need a copy?</p> <p>12 MR. AIGEN: Yeah, we'll order one,</p> <p>13 just regular time. Doesn't need to be</p> <p>14 expedited.</p> <p>15 (Time Noted: 3:38 p.m.)</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 DENNIS C. SAUTER</p> <p>20</p> <p>21 Subscribed and sworn to before me</p> <p>22 this day of 2021.</p> <p>23</p> <p>24 _____</p> <p>25 Notary Public</p>	<p>Page 121</p> <p>1 District of Columbia, to wit:</p> <p>2 I, Stacey L. Daywalt, a Notary</p> <p>3 Public of the District of Columbia, do hereby</p> <p>4 certify that the within-named witness remotely</p> <p>5 appeared before me at the time and place herein</p> <p>6 set out, and after having been duly sworn by</p> <p>7 me, according to law, was examined by Counsel.</p> <p>8 I further certify that the</p> <p>9 examination was recorded stenographically by me</p> <p>10 and this transcript is a true record of the</p> <p>11 proceedings.</p> <p>12 I further certify that I am not of</p> <p>13 counsel to any of the parties, nor an employee</p> <p>14 of counsel, nor related to any of the parties,</p> <p>15 nor in any way interested in the outcome of</p> <p>16 this action.</p> <p>17 As witness my hand and Notarial Seal</p> <p>18 this 17th day of November, 2021.</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 Stacey L. Daywalt, Notary Public</p> <p>23 My Commission Expires: 4/14/2026</p> <p>24</p> <p>25</p>

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<p>1 -----I N D E X-----</p> <p>2</p> <p>3 WITNESS EXAMINATION BY PAGE</p> <p>4 DENNIS C. SAUTER BY MR. MORRIS 4</p> <p>5</p> <p>6 -----EXHIBITS-----</p> <p>7 PREVIOUSLY MARKED EXHIBITS PAGE LINE</p> <p>8 Exhibit 181</p> <p>9 Declaration of Dennis C. Sauter, 24 3</p> <p>10 Jr.</p> <p>11 Exhibit 54</p> <p>12 E-mail chain with attachment dated 5/2/19</p> <p>13 D-CNL003777-779 25 25</p> <p>14</p> <p>15 Exhibit 57</p> <p>16 Promissory Note dated 5/3/19</p> <p>17 D-CNL003764-65 29 5</p> <p>18</p> <p>19 Exhibit 45</p> <p>20 Consolidated Financial Statements and Supplemental Information</p> <p>21 December 31, 2018</p> <p>22 D-CNL002273-296 72 19</p> <p>23</p> <p>24 Exhibit 182</p> <p>25 Memo dated 5/28/19 83 2</p> <p>26 Exhibit 59</p> <p>27 Memo dated 10/23/20</p> <p>28 HCMFAS 000025-031 111 22</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p>	<p>1 NAME OF CASE:</p> <p>2 DATE OF DEPOSITION:</p> <p>3 NAME OF WITNESS:</p> <p>4 Reason Codes:</p> <p>5 1. To clarify the record.</p> <p>6 2. To conform to the facts.</p> <p>7 3. To correct transcription errors.</p> <p>8 Page _____ Line _____ Reason _____</p> <p>9 From _____ to _____</p> <p>10 Page _____ Line _____ Reason _____</p> <p>11 From _____ to _____</p> <p>12 Page _____ Line _____ Reason _____</p> <p>13 From _____ to _____</p> <p>14 Page _____ Line _____ Reason _____</p> <p>15 From _____ to _____</p> <p>16 Page _____ Line _____ Reason _____</p> <p>17 From _____ to _____</p> <p>18 Page _____ Line _____ Reason _____</p> <p>19 From _____ to _____</p> <p>20 Page _____ Line _____ Reason _____</p> <p>21 From _____ to _____</p> <p>22 Page _____ Line _____ Reason _____</p> <p>23 From _____ to _____</p> <p>24</p> <p>25 _____</p>

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